

EXHIBIT 68

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Page 1

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

-----:
UNITED STATES, et al., :
:
Plaintiff, :
:
vs. : Case No.:
: 1:23-CV-00108-LMB-JFA
GOOGLE, LLC, :
:
Defendant. :
-----:

CONFIDENTIAL VIDEOTAPED DEPOSITION OF ADORIA LIM

DATE: February 29, 2024
TIME: 9:37 a.m.
LOCATION: U.S. Department of Justice
Antitrust Division
450 Fifth Street, Northwest
Washington, D.C. 20530

REPORTED BY: Shari R. Broussard, RPR, CSR
Reporter, Notary
Job No. CS6485261

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| <p>1 APPEARANCES</p> <p>2 On behalf of Plaintiff:</p> <p>3 CRAIG BRISKIN, ESQUIRE</p> <p>4 KATHERINE CLEMONS, ESQUIRE</p> <p>5 ALVIN CHU, ESQUIRE</p> <p>6 U.S. Department of Justice</p> <p>7 450 Fifth Street, Northwest</p> <p>8 Washington, D.C. 20530</p> <p>9 On behalf of Defendant:</p> <p>10 MARTHA L. GOODMAN, ESQUIRE</p> <p>11 ANNEISE CORRIVEAU, ESQUIRE</p> <p>12 BYRON BECKER, ESQUIRE</p> <p>13 HEATHER MILLIGAN, ESQUIRE (Via Zoom)</p> <p>14 Paul, Weiss, Rifkind,</p> <p>15 Wharton & Garrison, LLP</p> <p>16 2001 K Street, Northwest</p> <p>17 Washington, D.C. 20006-1047</p> <p>18 (202) 223-7341</p> <p>19 mgoodman@paulweiss.com</p> <p>20 accoriveau@paulweiss.com</p> <p>21 bpbecker@paulweiss.com</p> <p>22 ALSO PRESENT:</p> <p>David Campbell, Video Technician</p> <p>John Griffin, DoJ</p> <p>Olivia Choi, DoJ</p> <p>Margaret Lynn, DoJ</p> <p>Dulce Nunez, DoJ</p> <p>David Pearl, Esquire (Via Zoom)</p> <p>Alison Forman, The Brattle Group (Via Zoom)</p> <p>Jack Turner, The Brattle Group (Via Zoom)</p> <p>Julie Suh, The Brattle Group (Via Zoom)</p> <p>Xiaoxi Tu, Esquire (Via Zoom)</p> | <p>1 PROCEEDINGS</p> <p>2 VIDEO TECHNICIAN: Good morning. We are</p> <p>3 going on the record on February 29th, 2024, and</p> <p>4 the time on the video monitor is 9:37 a.m.</p> <p>5 This is Media Unit Number 1 of the</p> <p>6 video-recorded deposition of Adoria Lim in the</p> <p>7 matter of United States of America, et al., versus</p> <p>8 Google, LLC. The location of this deposition is</p> <p>9 450 Fifth Street, Northwest, Washington, D.C.</p> <p>10 20530.</p> <p>11 My name is David Campbell, representing</p> <p>12 Veritext, and I'm the videographer. The court</p> <p>13 reporter today is Shari Broussard also with</p> <p>14 Veritext.</p> <p>15 Counsel will please identify yourselves</p> <p>16 for the record after which the court reporter will</p> <p>17 please swear in the witness and we can proceed.</p> <p>18 MS. GOODMAN: Martha Goodman on behalf</p> <p>19 of plaintiff Google -- I'm sorry, defendant</p> <p>20 Google, joined by Annelise Corriveau and Byron</p> <p>21 Becker of Paul Weiss and Ricardo -- I forgot his</p> <p>22 last name --</p> |
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| <p>1 CONTENTS</p> <p>2 EXAMINATION BY: PAGE</p> <p>3 Counsel for Defendant 5</p> <p>4</p> <p>5 LIM DEPOSITION EXHIBITS: * PAGE</p> <p>6 1 Lim Expert Rebuttal Report, 2/13/24, 44</p> <p>7 Respass Expert Report, 12/22/23</p> <p>8</p> <p>9 2 Letter from Pearl to Garcia, 9/23/23 109</p> <p>10</p> <p>11 3 Blog, "How our display buying platforms</p> <p>12 share revenue with publishers" 119</p> <p>13</p> <p>14 4 Digital Media Bills, Bates NAVY-ADS-249484</p> <p>15 to 522 153</p> <p>16</p> <p>17 5 Declaration of Devon P. Mahoney 268</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22 (* Exhibits attached to transcript.)</p> | <p>1 MR. MARCHINGIGILO: Marchingigilo.</p> <p>2 MS. GOODMAN: -- from Analysis Group.</p> <p>3 MR. BRISKIN: Craig Briskin from the</p> <p>4 Department of Justice for plaintiffs.</p> <p>5 MR. CHU: Alvin Chu, Department of</p> <p>6 Justice, for plaintiffs.</p> <p>7 MS. CLEMONS: Katherine Clemons --</p> <p>8 Katherine Clemons, Department of Justice, for</p> <p>9 plaintiffs.</p> <p>10 MR. GRIFFIN: John Griffin, financial</p> <p>11 analyst with the Department of Justice.</p> <p>12 THE REPORTER: Are you ready for me to</p> <p>13 swear the witness?</p> <p>14 MS. GOODMAN: I guess so.</p> <p>15 WHEREUPON,</p> <p>16 ADORIA LIM</p> <p>17 called as a witness, and having been sworn by the</p> <p>18 notary public, was examined and testified as</p> <p>19 follows:</p> <p>20 EXAMINATION BY COUNSEL FOR DEFENDANT</p> <p>21 BY MS. GOODMAN:</p> <p>22 Q Good morning, Ms. Lim.</p> |

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| <p style="text-align: right;">Page 14</p> <p>1 with Brent.</p> <p>2 Q And to the best of your memory, when did</p> <p>3 you first speak with Brent?</p> <p>4 A I don't have a more specific memory</p> <p>5 other than the spring of 2023.</p> <p>6 Q And have you worked -- what's your best</p> <p>7 estimate of the number of hours you have billed on</p> <p>8 this matter since you began work on it sometime in</p> <p>9 the spring or late spring of 2023?</p> <p>10 A Over 600 hours.</p> <p>11 Q And those are billed at -- all 600 of</p> <p>12 those hours were billed at the rate of \$800 an</p> <p>13 hour?</p> <p>14 A Yes.</p> <p>15 Q How many other individuals at The</p> <p>16 Brattle Group besides yourself have billed to this</p> <p>17 matter?</p> <p>18 A More than 30, less than 50.</p> <p>19 Q And how many individuals at -- at The</p> <p>20 Brattle Group have worked on the quantification of</p> <p>21 damages in this matter?</p> <p>22 A Are you -- I need you to clarify -- or</p> | <p style="text-align: right;">Page 16</p> <p>1 who worked on the quantification of damages at The</p> <p>2 Brattle Group for this matter?</p> <p>3 A Again, in reference to -- in -- in</p> <p>4 support of either Dr. Respass or myself?</p> <p>5 Q Yes.</p> <p>6 A Also Gage Hornung, H-O-R-N-U-N-G.</p> <p>7 Q Anybody else?</p> <p>8 A There are some individuals in our IT</p> <p>9 group whose names I don't remember right now.</p> <p>10 Q Okay. Did you review bills on this</p> <p>11 matter?</p> <p>12 When I say "this matter," I'm referring</p> <p>13 specifically to the quantification of damages done</p> <p>14 by Dr. Respass and yourself.</p> <p>15 A I don't review the invoices themselves.</p> <p>16 I review the time entries for those individuals</p> <p>17 who are working -- who work to support Dr. Respass</p> <p>18 and who are working to support myself.</p> <p>19 Q Okay. And have you reviewed the time</p> <p>20 entries for the individuals who are working to</p> <p>21 support Dr. Respass and yourself throughout the</p> <p>22 entirety of Brattle Group's engagement on this</p> |
| <p style="text-align: right;">Page 15</p> <p>1 let me ask you to clarify with regard to in</p> <p>2 support of Dr. Simcoe, in support of Dr. Respass</p> <p>3 and/or myself or are you asking about -- are you</p> <p>4 asking for the collective -- those collective --</p> <p>5 all those people under that umbrella, or are you</p> <p>6 asking about a specific -- under a specific -- in</p> <p>7 support of a specific expert?</p> <p>8 Q Sure. So for Dr. Respass and yourself,</p> <p>9 how many individuals at The Brattle Group have</p> <p>10 worked on what I'll call the quantification of</p> <p>11 damages that is reflected in your report and</p> <p>12 Dr. Respass' report?</p> <p>13 A More than five, less than ten.</p> <p>14 Q The individuals who you met with at The</p> <p>15 Brattle Group to prepare for your deposition which</p> <p>16 you named earlier, are those the individuals who</p> <p>17 worked on the quantification of damages at The</p> <p>18 Brattle Group?</p> <p>19 A Those are a -- those individuals that I</p> <p>20 named earlier are a subset.</p> <p>21 Q So you named seven individuals earlier.</p> <p>22 Are there any other individuals you're remembering</p> | <p style="text-align: right;">Page 17</p> <p>1 matter, meaning from the spring of 2023 to the</p> <p>2 present?</p> <p>3 MR. BRISKIN: Let me just state that</p> <p>4 Section 515 of the expert stip protects budgets,</p> <p>5 invoices, bills, receipts, or time records</p> <p>6 concerning testifying experts, or consultants,</p> <p>7 their staff, assistants, colleagues, or associates</p> <p>8 of other companies or organizations from</p> <p>9 disclosure.</p> <p>10 MS. GOODMAN: I am not asking about the</p> <p>11 contents of the bills, I'm asking if she reviewed</p> <p>12 bills.</p> <p>13 MR. BRISKIN: Right. I'm instructing</p> <p>14 the witness not to testify with regard to any</p> <p>15 contents of budgets, invoices, bills, receipts, or</p> <p>16 time records.</p> <p>17 BY MS. GOODMAN:</p> <p>18 Q So my question again is do you review</p> <p>19 the time entries for the individuals who you named</p> <p>20 who worked to support Dr. Respass and yourself</p> <p>21 from the beginning of this -- the engagement on</p> <p>22 this matter to the present?</p> |

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| <p>1 A Yes.</p> <p>2 Q Okay. Did the time entries also</p> <p>3 indicate the hourly rate at which somebody bills?</p> <p>4 MR. BRISKIN: I'll instruct the witness</p> <p>5 not to answer.</p> <p>6 BY MS. GOODMAN:</p> <p>7 Q How do you know the hourly rate of</p> <p>8 individuals who bill out at The Brattle Group on</p> <p>9 this matter?</p> <p>10 A I'm involved in the budgeting process.</p> <p>11 Q Okay. Can you approximate how many</p> <p>12 hours the eight individuals you named who have</p> <p>13 worked at The Brattle Group in support of</p> <p>14 Dr. Respass and your analyses in this matter, how</p> <p>15 many hours have those individuals billed over the</p> <p>16 life of that work?</p> <p>17 A I couldn't tell you that. I -- I don't</p> <p>18 know.</p> <p>19 Q Can you approximate it?</p> <p>20 A I have not focused on that and I have</p> <p>21 not kept count.</p> <p>22 Q Are you aware of any individual, other</p> | <p>1 report and your report on this matter?</p> <p>2 A I don't know.</p> <p>3 Q Can you give an approximation?</p> <p>4 A I'm -- as I said earlier, I'm -- I don't</p> <p>5 see the invoices when they go out and I -- I'm not</p> <p>6 in charge of collections on those invoices either,</p> <p>7 so it's not something I'm focused on.</p> <p>8 Q Do you make a distinction between</p> <p>9 invoices and collections in your answer?</p> <p>10 A So they're -- they're connected because</p> <p>11 you don't get collections unless you invoice. So</p> <p>12 you could invoice and not collect. But in either</p> <p>13 case -- in any case, as I said, I haven't -- I'm</p> <p>14 not in charge of the invoicing process or</p> <p>15 collection process in this matter.</p> <p>16 Q Okay. Is it possible to -- is it</p> <p>17 possible for The Brattle Group to invoice an</p> <p>18 amount and collect less than that amount?</p> <p>19 MR. BRISKIN: Objection to the form.</p> <p>20 THE WITNESS: Unfortunately, yes.</p> <p>21 BY MS. GOODMAN:</p> <p>22 Q And it's the case that just because an</p> |
| Page 19 | Page 21 |
| <p>1 than yourself, at The Brattle Group billing more</p> <p>2 than 600 hours --</p> <p>3 A I --</p> <p>4 Q -- on the quantification of damages?</p> <p>5 A I haven't focused on that, so I -- I --</p> <p>6 I don't know.</p> <p>7 Q Do you expect your staff to work more or</p> <p>8 fewer hours than yourself?</p> <p>9 MR. BRISKIN: Objection to the form.</p> <p>10 THE WITNESS: Can you clarify what you</p> <p>11 mean by that question? Are you referring in a --</p> <p>12 in a given year, just generally or --</p> <p>13 BY MS. GOODMAN:</p> <p>14 Q On -- on this matter do you expect your</p> <p>15 staff to work more or fewer hours than yourself?</p> <p>16 MR. BRISKIN: Objection to form.</p> <p>17 THE WITNESS: I don't have an</p> <p>18 expectation in that regard.</p> <p>19 BY MS. GOODMAN:</p> <p>20 Q Okay. Do you know how much The Brattle</p> <p>21 Group has been paid in connection with the work it</p> <p>22 has done with respect to Dr. Respass' work --</p> | <p>1 amount is invoiced doesn't mean that's the amount</p> <p>2 that's ultimately paid, correct?</p> <p>3 A Unfortunately, correct.</p> <p>4 Q Okay. And so you've worked you said</p> <p>5 about --</p> <p>6 A But generally speaking again, I've</p> <p>7 almost never seen a --</p> <p>8 Q I don't think there's a question</p> <p>9 pending.</p> <p>10 A Sorry, I didn't finish my answer, so I</p> <p>11 was just completing my answer.</p> <p>12 Again, I don't think I've seen an</p> <p>13 instance in which you can collect or we've</p> <p>14 collected without invoicing.</p> <p>15 Q Okay. Are you done?</p> <p>16 MR. BRISKIN: Objection to form.</p> <p>17 THE WITNESS: I'm done with that last</p> <p>18 answer.</p> <p>19 BY MS. GOODMAN:</p> <p>20 Q Okay. You've billed you said over 600</p> <p>21 hours on this matter, correct?</p> <p>22 A Correct.</p> |

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| <p style="text-align: right;">Page 22</p> <p>1 Q Are all 600 of those hours in connection</p> <p>2 with the quantification of damages work done in</p> <p>3 the Respress/Lim report -- reports?</p> <p>4 A Well, the -- since the time I filed my</p> <p>5 rebuttal report, I've billed additional hours in</p> <p>6 preparing for this deposition. So the 600 hours</p> <p>7 would be an approximation of hours billed to date.</p> <p>8 Q Okay. So of the 600 hours that you have</p> <p>9 billed to date, how many of those hours relate to</p> <p>10 the work to quantify damages in this case?</p> <p>11 A I'm not sure what you mean by my -- by</p> <p>12 that question, but I've spent about 400 hours --</p> <p>13 I've spent about 400 hours in support of -- in</p> <p>14 support of Dr. Respress in the preparation of his</p> <p>15 report, you know, in which he quantified damages.</p> <p>16 Q Okay. I'm just trying to understand of</p> <p>17 the 600 hours you spent in connection with the</p> <p>18 Respress/Lim reports, including the preparation for</p> <p>19 your deposition about which we're here to --</p> <p>20 you're here to testify -- preparation of your</p> <p>21 reports about which you're here to testify today,</p> <p>22 how many of those 600 hours go to the work related</p> | <p style="text-align: right;">Page 24</p> <p>1 I'm not asking if you kept count, I'm</p> <p>2 asking if you can give an approximation of how</p> <p>3 many hours of the 600 were spent in connection</p> <p>4 with work on the quantification of damages?</p> <p>5 MR. BRISKIN: Objection to form.</p> <p>6 THE WITNESS: I haven't focused on</p> <p>7 keeping track of my hours in the manner in which</p> <p>8 you described. I wouldn't be able to give you any</p> <p>9 approximation.</p> <p>10 BY MS. GOODMAN:</p> <p>11 Q So you can't say if you spent one hour</p> <p>12 working on the quantification of damages and 599</p> <p>13 hours working on the accounting opinions you</p> <p>14 offer?</p> <p>15 MR. BRISKIN: Objection to form.</p> <p>16 THE WITNESS: I'm sorry, I just haven't</p> <p>17 kept track in the manner in which you're asking.</p> <p>18 I -- I -- I just can't give an approximation.</p> <p>19 BY MS. GOODMAN:</p> <p>20 Q Okay. So it's possible you've spent one</p> <p>21 hour of the 600 hours on the quantification of</p> <p>22 damages?</p> |
| <p style="text-align: right;">Page 23</p> <p>1 to the profitability opinions versus the damages</p> <p>2 opinions?</p> <p>3 A I would not be able to tell you that. I</p> <p>4 have not kept count.</p> <p>5 VIDEO TECHNICIAN: I'm sorry. Can we go</p> <p>6 off the record one second?</p> <p>7 MS. GOODMAN: Sure.</p> <p>8 MR. BRISKIN: Sure.</p> <p>9 VIDEO TECHNICIAN: Off the record at</p> <p>10 10:03.</p> <p>11 (Brief recess.)</p> <p>12 VIDEO TECHNICIAN: Back on the record at</p> <p>13 10:08.</p> <p>14 BY MS. GOODMAN:</p> <p>15 Q Ms. Lim, of the 600 hours that you have</p> <p>16 spent working on the topics reflected in the</p> <p>17 Respress and Lim reports, including preparing for</p> <p>18 your deposition, can you give an approximation of</p> <p>19 how many of those hours relate to the calculation</p> <p>20 of damages?</p> <p>21 A I'm sorry, I didn't keep count.</p> <p>22 Q When you were -- withdrawn.</p> | <p style="text-align: right;">Page 25</p> <p>1 MR. BRISKIN: Objection to form.</p> <p>2 THE WITNESS: I'm sure that I spent more</p> <p>3 than one hour.</p> <p>4 BY MS. GOODMAN:</p> <p>5 Q Okay. Have you spent more than ten</p> <p>6 hours on the approximation of damages?</p> <p>7 A I've spent more than ten hours.</p> <p>8 Q Have you spent more than a hundred hours</p> <p>9 on the calculation of damages?</p> <p>10 A I'm not sure. I haven't kept count.</p> <p>11 It's quite possible.</p> <p>12 Q Is it quite possible or probable or more</p> <p>13 likely than not? Can you say more than possible?</p> <p>14 A It's quite possible.</p> <p>15 Q Dr. Respress billed 348.5 hours on this</p> <p>16 matter.</p> <p>17 Does that figure help you approximate</p> <p>18 how many hours you spent on the topic of</p> <p>19 calculating damages in this matter?</p> <p>20 A No.</p> <p>21 Q Is it quite possible that you billed</p> <p>22 more than 200 hours to the calculation of damages</p> |

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| <p style="text-align: right;">Page 42</p> <p>1 withdrawal prior to reading his declaration</p> <p>2 yesterday.</p> <p>3 BY MS. GOODMAN:</p> <p>4 Q When did you learn that Dr. Respass</p> <p>5 could no longer work on the matter?</p> <p>6 MR. BRISKIN: You can answer with a date</p> <p>7 if you know.</p> <p>8 THE WITNESS: February 12th.</p> <p>9 BY MS. GOODMAN:</p> <p>10 Q Who wrote your rebuttal report?</p> <p>11 A I wrote my rebuttal report as it is</p> <p>12 filed.</p> <p>13 Q Did you work on your rebuttal report</p> <p>14 prior to February 12th?</p> <p>15 MR. BRISKIN: I'd just instruct the</p> <p>16 witness not to answer with regard to the contents</p> <p>17 of the report.</p> <p>18 THE WITNESS: Prior to Dr. Respass'</p> <p>19 withdrawal, I worked with Dr. Respass on the</p> <p>20 preparation of what was at -- what was at that</p> <p>21 time going to be his rebuttal report.</p> <p>22 BY MS. GOODMAN:</p> | <p style="text-align: right;">Page 44</p> <p>1 them out." Could you clarify, please.</p> <p>2 Q Did you type every word in your rebuttal</p> <p>3 report yourself?</p> <p>4 MR. BRISKIN: Objection to form.</p> <p>5 THE WITNESS: If you're asking me</p> <p>6 whether I keystroked every single letter in my</p> <p>7 rebuttal report, no.</p> <p>8 MR. BRISKIN: Aren't we getting close to</p> <p>9 an hour? Is this a good time to take a break?</p> <p>10 MS. GOODMAN: Sure.</p> <p>11 MR. BRISKIN: Okay.</p> <p>12 VIDEO TECHNICIAN: Off the record at</p> <p>13 10:37 a.m.</p> <p>14 (Brief recess.)</p> <p>15 (Lim Exhibit Number 1 was</p> <p>16 marked for identification.)</p> <p>17 VIDEO TECHNICIAN: Back on the record at</p> <p>18 10:53.</p> <p>19 BY MS. GOODMAN:</p> <p>20 Q Ms. Lim, you've been handed your</p> <p>21 rebuttal report marked as Lim Exhibit 1.</p> <p>22 Do you have that in front of you?</p> |
| <p style="text-align: right;">Page 43</p> <p>1 Q Did you write any portions of the</p> <p>2 rebuttal report as filed prior to February 12th,</p> <p>3 2024?</p> <p>4 MR. BRISKIN: You can answer yes or no.</p> <p>5 THE WITNESS: No.</p> <p>6 BY MS. GOODMAN:</p> <p>7 Q Did you -- are there any portions of the</p> <p>8 rebuttal report, which you filed on February 13th,</p> <p>9 2024, which were written by Dr. Respass?</p> <p>10 MR. BRISKIN: I'd just instruct the</p> <p>11 witness not to respond with regard to the</p> <p>12 contents, but you can respond yes or no.</p> <p>13 THE WITNESS: I wrote my rebuttal report</p> <p>14 as filed.</p> <p>15 BY MS. GOODMAN:</p> <p>16 Q You wrote the entirety of your rebuttal</p> <p>17 report as filed; is that your testimony?</p> <p>18 MR. BRISKIN: Objection to form.</p> <p>19 THE WITNESS: Yes, it is my words.</p> <p>20 BY MS. GOODMAN:</p> <p>21 Q Did you write them out yourself?</p> <p>22 A I'm not sure what you mean by "write</p> | <p style="text-align: right;">Page 45</p> <p>1 A I do.</p> <p>2 Before we continue, I realized that I</p> <p>3 need to clarify. I left one individual off of the</p> <p>4 list of names that I had given you with regard to</p> <p>5 other Brattle staff that assisted Dr. Respass in</p> <p>6 the preparation of his report and assisted me in</p> <p>7 the preparation of my report and that is Alison</p> <p>8 Forman.</p> <p>9 Q Okay. So you have Exhibit 1 in front of</p> <p>10 you?</p> <p>11 A I do.</p> <p>12 Q And the -- the opinions you offer in</p> <p>13 this case are based on the assumption that Google</p> <p>14 has violated the antitrust laws as alleged in the</p> <p>15 amended complaint; is that accurate?</p> <p>16 A Are you referring to a particular</p> <p>17 portion of my report?</p> <p>18 Q I'm just asking if your opinions are</p> <p>19 based on the assumption that Google has violated</p> <p>20 the antitrust laws as alleged in the amended</p> <p>21 complaint. Is that accurate?</p> <p>22 A Yes.</p> |

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| <p style="text-align: right;">Page 46</p> <p>1 Q Okay. And you have not been asked to</p> <p>2 independently evaluate the legal claims in this</p> <p>3 matter; is that accurate?</p> <p>4 A Yes.</p> <p>5 Q And is it your testimony that you did</p> <p>6 not independently evaluate Dr. Simcoe's analyses</p> <p>7 in this case?</p> <p>8 A That is correct.</p> <p>9 Q And the only thing you do with</p> <p>10 Dr. Simcoe's analyses is use them as inputs to</p> <p>11 calculate overcharges and advertiser damages?</p> <p>12 A That is correct.</p> <p>13 Q Did you read Dr. Simcoe's report?</p> <p>14 A I have.</p> <p>15 Q Did you evaluate or study his models to</p> <p>16 understand how he arrived at the but-for take rate</p> <p>17 that he offers in his report?</p> <p>18 MR. BRISKIN: Objection to form.</p> <p>19 THE WITNESS: Can you ask the question</p> <p>20 again?</p> <p>21 BY MS. GOODMAN:</p> <p>22 Q Did you study his models to understand</p> | <p style="text-align: right;">Page 48</p> <p>1 THE WITNESS: Correct.</p> <p>2 BY MS. GOODMAN:</p> <p>3 Q And you're not offering an opinion in</p> <p>4 this case as to whether the overcharge you</p> <p>5 calculate was caused by anticompetitive conduct;</p> <p>6 is that correct?</p> <p>7 A One more time.</p> <p>8 Q You are not offering an opinion in this</p> <p>9 case as to whether the overcharge you calculate</p> <p>10 was caused by anticompetitive conduct; is that</p> <p>11 correct?</p> <p>12 A That is correct.</p> <p>13 Q You are not opining in this case that</p> <p>14 Google is not in compliance with generally</p> <p>15 accepted accounting principles by treating itself</p> <p>16 as a principal, correct?</p> <p>17 A I do not have an opinion that Google's</p> <p>18 financial statements in which Google considers</p> <p>19 itself a principal, that those financial</p> <p>20 statements are materially misstated.</p> <p>21 Q You -- you do not offer an opinion in</p> <p>22 this case as to whether Google's internal DVAA</p> |
| <p style="text-align: right;">Page 47</p> <p>1 how he arrived at the but-for take rates that he</p> <p>2 offers in his report?</p> <p>3 A I -- I read his report. I wouldn't use</p> <p>4 the word "study" to describe what I did. I read</p> <p>5 his report at a high level and did not attempt to</p> <p>6 evaluate his analyses.</p> <p>7 Q And because you did not attempt to</p> <p>8 evaluate his analyses, you have no opinion about</p> <p>9 the strength or weakness of his analyses; is that</p> <p>10 accurate?</p> <p>11 MR. BRISKIN: Objection to form.</p> <p>12 THE WITNESS: I did not independently</p> <p>13 evaluate Dr. Simcoe's analyses.</p> <p>14 BY MS. GOODMAN:</p> <p>15 Q And is it accurate then that you have no</p> <p>16 opinion about the strength or weakness of his</p> <p>17 analyses?</p> <p>18 A I have no opinions about that.</p> <p>19 Q And so you have no opinion whether</p> <p>20 Dr. Simcoe's analyses are correct or incorrect,</p> <p>21 correct?</p> <p>22 MR. BRISKIN: Objection to form.</p> | <p style="text-align: right;">Page 49</p> <p>1 product area reporting was in accordance with</p> <p>2 GAAP, correct?</p> <p>3 MR. BRISKIN: Objection to form.</p> <p>4 BY MS. GOODMAN:</p> <p>5 Q Let me withdraw the question.</p> <p>6 Your opinion in this case -- withdrawn.</p> <p>7 You do not opine that Google's internal</p> <p>8 DVAA product area reporting was not in accordance</p> <p>9 with GAAP, correct?</p> <p>10 MR. BRISKIN: Objection to form.</p> <p>11 THE WITNESS: So I -- I don't -- I don't</p> <p>12 have an opinion about whether Google's internal</p> <p>13 DVAA product area reporting was in accordance with</p> <p>14 GAAP.</p> <p>15 BY MS. GOODMAN:</p> <p>16 Q And --</p> <p>17 MR. BRISKIN: Did you finish your</p> <p>18 answer?</p> <p>19 THE WITNESS: I did. Thank you.</p> <p>20 BY MS. GOODMAN:</p> <p>21 Q And it is accurate that you do not have</p> <p>22 an opinion about whether Google's internal DVAA</p> |

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| <p style="text-align: right;">Page 50</p> <p>1 product area reporting was not in accordance with</p> <p>2 GAAP, correct?</p> <p>3 MR. BRISKIN: Objection to form.</p> <p>4 THE WITNESS: I think -- I think Google</p> <p>5 has stated that its DVAA internal management view</p> <p>6 reporting is not in accordance with GAAP.</p> <p>7 BY MS. GOODMAN:</p> <p>8 Q I'm asking for your opinion in this</p> <p>9 case. Can you please answer the question as I</p> <p>10 posed it.</p> <p>11 You do not have an opinion about whether</p> <p>12 Google's internal DVAA product area reporting was</p> <p>13 not in accordance with GAAP, correct?</p> <p>14 MR. BRISKIN: Objection to form.</p> <p>15 THE WITNESS: So as I just said, Google</p> <p>16 has said that its management view internal</p> <p>17 reporting is not in accordance with GAAP and I see</p> <p>18 no reason to -- I've not seen anything to indicate</p> <p>19 that Google is wrong in that respect.</p> <p>20 BY MS. GOODMAN:</p> <p>21 Q I'm just asking whether you offer an</p> <p>22 opinion one way or another in this case as to</p> | <p style="text-align: right;">Page 52</p> <p>1 I do not have an opinion about whether</p> <p>2 Google's financial statements -- publicly-reported</p> <p>3 financial statements in which Google treats itself</p> <p>4 as a principal for most transactions is materially</p> <p>5 misstated relative to GAAP.</p> <p>6 BY MS. GOODMAN:</p> <p>7 Q It is accurate that you do not disagree</p> <p>8 with Google's treatment of itself as a principal</p> <p>9 in its publicly-filed financial statements</p> <p>10 reported under GAAP, correct?</p> <p>11 MR. BRISKIN: Objection to form.</p> <p>12 THE WITNESS: Sorry, I'm getting a</p> <p>13 little -- little confused about the double</p> <p>14 negatives. One more time.</p> <p>15 BY MS. GOODMAN:</p> <p>16 Q It is accurate that you do not disagree</p> <p>17 with Google's treatment of itself as a principal</p> <p>18 in its publicly-filed financial statements</p> <p>19 reported under GAAP?</p> <p>20 MR. BRISKIN: Objection to form.</p> <p>21 THE WITNESS: I don't agree or disagree.</p> <p>22 I don't have an opinion about that.</p> |
| <p style="text-align: right;">Page 51</p> <p>1 whether Google's internal DVAA management</p> <p>2 reporting is not in accordance with GAAP and it</p> <p>3 sounds like the answer is no. Am I correct in</p> <p>4 understanding your testimony?</p> <p>5 MR. BRISKIN: Objection to form.</p> <p>6 THE WITNESS: I -- I just think it's a</p> <p>7 little more nuanced than that.</p> <p>8 BY MS. GOODMAN:</p> <p>9 Q Okay. You do not opine that Google is</p> <p>10 not in accordance with GAAP by treating itself as</p> <p>11 a principal, correct?</p> <p>12 MR. BRISKIN: Objection to form.</p> <p>13 THE WITNESS: Sorry, one more -- one</p> <p>14 more time.</p> <p>15 BY MS. GOODMAN:</p> <p>16 Q You do not offer an opinion that Google</p> <p>17 is not in accordance with GAAP by treating itself</p> <p>18 as a principal, correct?</p> <p>19 MR. BRISKIN: Objection to form.</p> <p>20 THE WITNESS: I'm not sure how that</p> <p>21 question is different from the other question you</p> <p>22 asked before.</p> | <p style="text-align: right;">Page 53</p> <p>1 BY MS. GOODMAN:</p> <p>2 Q Okay. And you do not offer an opinion</p> <p>3 in this matter that Google misapplied ASC 606 by</p> <p>4 treating itself as a principal, correct?</p> <p>5 MR. BRISKIN: Objection to form.</p> <p>6 THE WITNESS: Again, are you -- are you</p> <p>7 referring to Google's publicly-reported financial</p> <p>8 statements?</p> <p>9 BY MS. GOODMAN:</p> <p>10 Q Yes.</p> <p>11 A I don't have an opinion one way or the</p> <p>12 other. I don't agree or disagree with regard to</p> <p>13 Google's treatment of itself as a principal for</p> <p>14 most transactions in those financial statements.</p> <p>15 Q And in this line of questioning you were</p> <p>16 looking at Exhibit 1, which is your rebuttal</p> <p>17 report. Which parts of Exhibit 1 were you</p> <p>18 reading -- reading?</p> <p>19 MR. BRISKIN: Objection to form.</p> <p>20 THE WITNESS: You asked me some</p> <p>21 questions about whether I had performed an</p> <p>22 independent evaluation of Dr. Simcoe's work and I</p> |

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| <p style="text-align: right;">Page 66</p> <p>1 in Damages Analysis"?</p> <p>2 A The -- the avenues are the red lines</p> <p>3 or -- or, sorry, the FAA purchase avenues are the</p> <p>4 red arrows shown in Figure 4 and the FAA purchase</p> <p>5 pathways are a subset of the red avenues.</p> <p>6 Q Okay. Did you see any evidence --</p> <p>7 withdrawn.</p> <p>8 And so would it be accurate to put in</p> <p>9 between the left-hand side of DV360, TTD, other</p> <p>10 DSPs, and Google Ads and the right-hand side blue</p> <p>11 bubble FAAs the advertising agencies through which</p> <p>12 FAAs purchase ads?</p> <p>13 MR. BRISKIN: Objection to form.</p> <p>14 THE WITNESS: I think this question was</p> <p>15 similar to the previous question you asked me</p> <p>16 before. Figure 3 just is different from -- I'm</p> <p>17 sorry, Figure 4 is different from Figure 3 in that</p> <p>18 it breaks out more binders and it shows the red</p> <p>19 arrows, which are the FAA purchase pathways, of</p> <p>20 which the -- sorry, it shows the red arrows, which</p> <p>21 are the FAA purchase avenues, of which the FAA</p> <p>22 purchase pathways are a -- are a subset. So that</p> | <p style="text-align: right;">Page 68</p> <p>1 yourself and Mr. Chu. That's what I mean.</p> <p>2 Imagine yourself to be an FAA and Mr. Chu being</p> <p>3 Google.</p> <p>4 Is there any other entity between the</p> <p>5 FAA and Google in the course of purchasing ads</p> <p>6 that you saw?</p> <p>7 MR. BRISKIN: Objection to form.</p> <p>8 THE WITNESS: So I'm not -- sorry, I'm</p> <p>9 not -- I'm not sure the -- the seating -- the</p> <p>10 hypothetical -- or it's not hypothetical, but the</p> <p>11 seating diagram really helps me understand your</p> <p>12 question.</p> <p>13 Again, the FAAs and -- the FAAs</p> <p>14 purchased display advertising from Google and, as</p> <p>15 I testified earlier, that the FAAs used ad</p> <p>16 agencies to do so.</p> <p>17 BY MS. GOODMAN:</p> <p>18 Q Okay. And by using the ad agencies to</p> <p>19 do so, is it accurate that the ad agencies sit</p> <p>20 between the FAAs and Google?</p> <p>21 MR. BRISKIN: Objection to form.</p> <p>22 THE WITNESS: Again, I'm not sure what</p> |
| <p style="text-align: right;">Page 67</p> <p>1 I -- I -- I -- I think you're asking a very</p> <p>2 similar question with regard to Figure 3 and</p> <p>3 Figure 4. I don't -- I would have the same</p> <p>4 answer.</p> <p>5 BY MS. GOODMAN:</p> <p>6 Q Okay. And it's accurate that the FAAs</p> <p>7 purchased display ads from Google using various ad</p> <p>8 agencies, correct?</p> <p>9 A Yes.</p> <p>10 Q Did you see any evidence that FAAs</p> <p>11 purchased display ads directly from Google?</p> <p>12 MR. BRISKIN: Objection to form.</p> <p>13 THE WITNESS: Could you clarify what you</p> <p>14 mean by "directly"?</p> <p>15 BY MS. GOODMAN:</p> <p>16 Q With no other entity sitting in between</p> <p>17 the FAA and Google.</p> <p>18 MR. BRISKIN: Objection to form.</p> <p>19 THE WITNESS: What -- what do you -- can</p> <p>20 you clarify what you mean by "sitting in between"?</p> <p>21 BY MS. GOODMAN:</p> <p>22 Q Well, Mr. Briskin is sitting in between</p> | <p style="text-align: right;">Page 69</p> <p>1 you mean by "sit between."</p> <p>2 BY MS. GOODMAN:</p> <p>3 Q So you can't answer the question?</p> <p>4 A I think you'd have to clarify it for me.</p> <p>5 Q Okay. What's your understanding of the</p> <p>6 word "directly"?</p> <p>7 MR. BRISKIN: Objection to form.</p> <p>8 THE WITNESS: I -- I -- it depends on</p> <p>9 the context.</p> <p>10 BY MS. GOODMAN:</p> <p>11 Q Can you give me a dictionary definition</p> <p>12 of the word "directly"?</p> <p>13 A Probably not without the dictionary.</p> <p>14 Q Okay.</p> <p>15 A I'm sorry, just -- I -- I wasn't</p> <p>16 prepared on dictionary definitions today.</p> <p>17 Q Okay. Did you see any evidence that the</p> <p>18 FAAs paid money directly to Google?</p> <p>19 MR. BRISKIN: Objection to form.</p> <p>20 THE WITNESS: Again, can you clarify</p> <p>21 what you mean by "directly"?</p> <p>22 BY MS. GOODMAN:</p> |

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| <p style="text-align: right;">Page 70</p> <p>1 Q Dollars went from an FAA directly to</p> <p>2 Google.</p> <p>3 MR. BRISKIN: Objection to form.</p> <p>4 THE WITNESS: So let me -- let me -- let</p> <p>5 me state it this way: So what I saw in the</p> <p>6 payment process was that Google invoiced the --</p> <p>7 Google invoiced the ad agencies and the ad</p> <p>8 agencies invoiced the FAAs and the FAAs paid</p> <p>9 100 percent of the charges invoiced by Google.</p> <p>10 VIDEO TECHNICIAN: Sorry, ma'am, it</p> <p>11 picks up when you're touching the microphone.</p> <p>12 THE WITNESS: Oh, sorry. I've probably</p> <p>13 just got a nervous habit there. Apologies. Do I</p> <p>14 need to say that again?</p> <p>15 VIDEO TECHNICIAN: No, you're fine.</p> <p>16 THE WITNESS: Okay.</p> <p>17 BY MS. GOODMAN:</p> <p>18 Q And so in what you saw, if I'm</p> <p>19 understanding you correctly, Google invoiced the</p> <p>20 ad agencies and the ad agencies invoiced the FAAs,</p> <p>21 correct?</p> <p>22 A Yes.</p> | <p style="text-align: right;">Page 72</p> <p>1 A I'm -- I'm -- I'm trying to actually</p> <p>2 understand what you mean by the difference between</p> <p>3 payment and purchase because you -- you asked a</p> <p>4 question about purchase, you asked a question</p> <p>5 about -- and I clarified with regard to payment.</p> <p>6 And -- and so if you could clarify what you mean</p> <p>7 by "purchase."</p> <p>8 Q I want to use --</p> <p>9 A I don't want to have a</p> <p>10 misunderstanding --</p> <p>11 Q I agree.</p> <p>12 A -- between the two of us.</p> <p>13 Q I agree.</p> <p>14 You used the word "purchase" throughout</p> <p>15 your report, so I want to use your understanding</p> <p>16 of purchase and I want to use your understanding</p> <p>17 of payment, which is also in your report.</p> <p>18 So please tell me what you understand to</p> <p>19 mean the difference between those two words as</p> <p>20 used in your report and we will have that common</p> <p>21 understanding.</p> <p>22 A So as I testified earlier, my</p> |
| <p style="text-align: right;">Page 71</p> <p>1 Q Okay. And so in what you saw, can we</p> <p>2 have the common understanding that the ad</p> <p>3 agencies, therefore, sit between Google and the</p> <p>4 FAAs?</p> <p>5 MR. BRISKIN: Objection to form.</p> <p>6 BY MS. GOODMAN:</p> <p>7 Q That's what I mean by "sit between."</p> <p>8 Okay?</p> <p>9 A Are you referring to the payment process</p> <p>10 specifically when you refer to -- to "sit</p> <p>11 between"?</p> <p>12 Q I'm referring to both the payment and</p> <p>13 purchasing process.</p> <p>14 MR. BRISKIN: Objection to form.</p> <p>15 THE WITNESS: I reviewed the -- I</p> <p>16 reviewed the payment process.</p> <p>17 BY MS. GOODMAN:</p> <p>18 Q Did you review the purchasing process?</p> <p>19 A What do you mean by "purchasing</p> <p>20 process"?</p> <p>21 Q What's your understanding of the</p> <p>22 difference between payment and purchase?</p> | <p style="text-align: right;">Page 73</p> <p>1 understanding is that based on what I saw, the</p> <p>2 FAAs purchased an advertising from Google. With</p> <p>3 regard to the payment flow process specifically,</p> <p>4 Google invoiced the ad agencies and the ad</p> <p>5 agencies invoiced the FAAs and the payments</p> <p>6 reflect the invoiced parties.</p> <p>7 MS. GOODMAN: Move to strike as not</p> <p>8 responsive.</p> <p>9 BY MS. GOODMAN:</p> <p>10 Q My question to you is simply what do you</p> <p>11 understand the difference in meaning of the words</p> <p>12 "payment" and "purchase" to be in your report?</p> <p>13 A Purchase in my mind is who is -- it's</p> <p>14 who is -- it's -- it's the advertiser buying the</p> <p>15 ad inventory. Payment refers, in -- in my mind,</p> <p>16 to the physical flow of funds.</p> <p>17 Q Okay. So did you see any evidence that</p> <p>18 an FAA buys ad inventory directly from Google?</p> <p>19 MR. BRISKIN: Objection to form.</p> <p>20 THE WITNESS: As I stated earlier,</p> <p>21 the -- the FAAs purchased advertising from -- they</p> <p>22 purchased services from Google.</p> |

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| <p>1 BY MS. GOODMAN:</p> <p>2 Q Yes.</p> <p>3 A I'm not -- I'm not -- again, I'm not</p> <p>4 sure what you mean by "directly." I think I've --</p> <p>5 I think I've stated my understanding of both</p> <p>6 the -- of who's doing the purchasing and who's</p> <p>7 doing the paying in terms of the payment flow</p> <p>8 process.</p> <p>9 Q It is accurate that some of the ad</p> <p>10 agencies used by FAAs engaged other ad agencies to</p> <p>11 execute the FAAs' ad purchases, correct?</p> <p>12 A Yes.</p> <p>13 MR. BRISKIN: Can we take a break in the</p> <p>14 next five minutes, whenever it's a good breaking</p> <p>15 point?</p> <p>16 MS. GOODMAN: Yeah.</p> <p>17 BY MS. GOODMAN:</p> <p>18 Q Ms. Lim, did you see any evidence of an</p> <p>19 FAA buying ad inventory without the use of an</p> <p>20 advertising agency?</p> <p>21 A It's possible that that happened. I was</p> <p>22 asked to focus my damages analysis -- or</p> | <p>1 of those pathways the FAAs use ad agencies to make</p> <p>2 their purchases.</p> <p>3 Q And so it's accurate that, for purposes</p> <p>4 of the damages which you calculate in this case,</p> <p>5 there is no instance of an FAA buying ad inventory</p> <p>6 without the use of an advertising agency?</p> <p>7 A Yes.</p> <p>8 MS. GOODMAN: We can take a break.</p> <p>9 MR. BRISKIN: Thanks.</p> <p>10 VIDEO TECHNICIAN: Off the record at</p> <p>11 11:38.</p> <p>12 (Brief recess.)</p> <p>13 VIDEO TECHNICIAN: Back on the record at</p> <p>14 11:53.</p> <p>15 BY MS. GOODMAN:</p> <p>16 Q Ms. Lim, if you could turn to Exhibit 1,</p> <p>17 Appendix E, paragraph 44.</p> <p>18 A On page 17?</p> <p>19 Q Yes.</p> <p>20 A I'm there.</p> <p>21 Q The first sentence reads, "The FAAs</p> <p>22 purchased display ads from Google using various ad</p> |
| Page 75 | Page 77 |
| <p>1 Dr. Respass was asked to focus his damages</p> <p>2 analysis on the specific F- -- FAA purchase</p> <p>3 pathways in the -- in the Respass report.</p> <p>4 In -- in those pathways the FAAs used ad</p> <p>5 agencies to make their purchases of Google</p> <p>6 services, but it's -- it's -- it's possible that</p> <p>7 I -- I -- so, for example, what I'm -- let me</p> <p>8 just -- what I'm thinking about is, as I mentioned</p> <p>9 in my report, there are a number of blank agency</p> <p>10 IDs and I don't know in those circumstances</p> <p>11 where -- whether an ad agency was involved or not</p> <p>12 and I -- I can't recall -- no, no. Sorry. Strike</p> <p>13 that. I do recall that there are FAAs associated</p> <p>14 with those blank agency IDs.</p> <p>15 Q Okay. So for each of the 15 purchase</p> <p>16 pathways included in your damages analysis, did</p> <p>17 you see any evidence of any of the FAAs within</p> <p>18 those purchase pathways buying ad inventory</p> <p>19 without the use of an advertising agency?</p> <p>20 A By definition, those purchase pathways</p> <p>21 are as I've described them in Figures 8 through 10</p> <p>22 of the opening report and each of those -- in each</p> | <p>1 agencies."</p> <p>2 Do you see that?</p> <p>3 A Yes.</p> <p>4 Q For purposes of your damages</p> <p>5 computation, did you see any evidence that any FAA</p> <p>6 directed the advertising agency to purchase ads</p> <p>7 using Google products or services?</p> <p>8 MR. BRISKIN: Objection to form.</p> <p>9 THE WITNESS: I'm not sure what you mean</p> <p>10 by "directed."</p> <p>11 BY MS. GOODMAN:</p> <p>12 Q Did you see any evidence that any FAA</p> <p>13 told their advertising agency please purchase ads</p> <p>14 using Google products or services?</p> <p>15 MR. BRISKIN: Objection to form.</p> <p>16 THE WITNESS: I wasn't -- I was focused</p> <p>17 on the payment flow process, so I -- and I -- let</p> <p>18 me -- let me start over.</p> <p>19 So in the course of my work -- work, as</p> <p>20 I mentioned before, I reviewed probably</p> <p>21 thousands -- probably thousands of -- of documents</p> <p>22 in this matter and I don't recall the contents of</p> |

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| <p style="text-align: right;">Page 78</p> <p>1 each and every one of those. What I -- what I</p> <p>2 focused on was the payment flow process.</p> <p>3 So with regard to your question, I</p> <p>4 think -- I think my answer is I don't know. I</p> <p>5 don't -- I don't remember.</p> <p>6 BY MS. GOODMAN:</p> <p>7 Q Okay. So with regard to my question,</p> <p>8 you don't remember whether you saw any evidence</p> <p>9 that any FAA directed their advertising agency to</p> <p>10 use Google products or services to purchase ads;</p> <p>11 is that accurate?</p> <p>12 A I think --</p> <p>13 MR. BRISKIN: Objection to form.</p> <p>14 THE WITNESS: I think you modified your</p> <p>15 question to say -- when you clarified, you said</p> <p>16 did I see any evidence that an FAA had told an ad</p> <p>17 agency. And if -- if -- if that's how you're --</p> <p>18 what you mean by "directed," I don't recall one</p> <p>19 way or the other.</p> <p>20 BY MS. GOODMAN:</p> <p>21 Q Okay. That is what I mean by</p> <p>22 "directed."</p> | <p style="text-align: right;">Page 80</p> <p>1 THE WITNESS: What do you mean by</p> <p>2 "instructed"? Do you mean told again?</p> <p>3 BY MS. GOODMAN:</p> <p>4 Q What do you understand the word</p> <p>5 "instructed" to mean?</p> <p>6 A It depends on the context.</p> <p>7 Q In the context of my sentence, how do</p> <p>8 you interpret it?</p> <p>9 A I think that's what I'm asking you,</p> <p>10 if -- if you're -- if you mean told.</p> <p>11 Q I just want to understand how you</p> <p>12 under- -- how you interpret the word "instructed"</p> <p>13 in my question.</p> <p>14 What do you think I mean?</p> <p>15 Let me withdraw that.</p> <p>16 What do you understand the word</p> <p>17 "instructed" to mean in my question?</p> <p>18 A Told.</p> <p>19 Q Okay. Did you see any evidence in this</p> <p>20 case that any FAA instructed their advertising</p> <p>21 agency to use Google products or services to</p> <p>22 purchase ads?</p> |
| <p style="text-align: right;">Page 79</p> <p>1 So with regard to my question, you don't</p> <p>2 remember whether you saw any evidence that any FAA</p> <p>3 directed their advertising agency to use Google</p> <p>4 products or services to purchase -- to purchase</p> <p>5 ads; is that correct?</p> <p>6 MR. BRISKIN: Objection to form.</p> <p>7 THE WITNESS: If -- if in that question</p> <p>8 you -- you mean to replace "directed" with "told,"</p> <p>9 then I don't recall one way or the other.</p> <p>10 BY MS. GOODMAN:</p> <p>11 Q I said that is what I mean by</p> <p>12 "directed," so I would like to get a clear answer</p> <p>13 to my question.</p> <p>14 A Sorry, I thought I was being -- being</p> <p>15 clear.</p> <p>16 Q There's no question pending.</p> <p>17 A Apologies.</p> <p>18 Q Did you see any evidence in this case</p> <p>19 that any FAA instructed their advertising agency</p> <p>20 to use Google products or services to purchase</p> <p>21 ads?</p> <p>22 MR. BRISKIN: Objection to form.</p> | <p style="text-align: right;">Page 81</p> <p>1 MR. BRISKIN: Objection to form.</p> <p>2 THE WITNESS: Could you -- one -- one</p> <p>3 more time. Sorry.</p> <p>4 BY MS. GOODMAN:</p> <p>5 Q Did you see any evidence in this case</p> <p>6 that any FAA instructed their advertising agency</p> <p>7 to use Google products or services to purchase</p> <p>8 ads?</p> <p>9 MR. BRISKIN: Objection to form.</p> <p>10 THE WITNESS: Sorry, I -- I just want to</p> <p>11 be clear. Again, it's -- it's the -- it's the FAA</p> <p>12 is purchasing ads and -- and so -- so I think my</p> <p>13 answer is the -- again, I'm not sure how that</p> <p>14 question is different from your previous question,</p> <p>15 which -- which I understand you to mean did I see</p> <p>16 any evidence in this matter where the -- where an</p> <p>17 FAA told an ad agency to use Google with regard to</p> <p>18 the FAAs' purchase -- purchases of Google's</p> <p>19 services.</p> <p>20 And my -- so my answer would be that,</p> <p>21 again, I've reviewed thousands of documents in</p> <p>22 this matter and I don't recall the -- the content</p> |

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| <p style="text-align: right;">Page 82</p> <p>1 of each and every one of them, so I may have seen</p> <p>2 something, I -- I may not. I -- I don't recall</p> <p>3 one way or the other. It was not something I</p> <p>4 focused on.</p> <p>5 MS. GOODMAN: Move to strike.</p> <p>6 BY MS. GOODMAN:</p> <p>7 Q It's accurate that the FAAs purchased</p> <p>8 display ads from Google using various ad agencies,</p> <p>9 correct?</p> <p>10 MR. BRISKIN: Objection to form.</p> <p>11 Oh, sorry.</p> <p>12 THE WITNESS: Yes.</p> <p>13 BY MS. GOODMAN:</p> <p>14 Q Okay. The FAAs used the various ad</p> <p>15 agencies how to purchase ads from Google?</p> <p>16 MR. BRISKIN: Objection to form.</p> <p>17 THE WITNESS: I'm not sure what you mean</p> <p>18 by "how."</p> <p>19 BY MS. GOODMAN:</p> <p>20 Q How did the various ad agencies</p> <p>21 participate in the process of purchasing display</p> <p>22 ads from Google for the FAAs?</p> | <p style="text-align: right;">Page 84</p> <p>1 particular contract was to provide overall context</p> <p>2 to, for example, an FAA purchase pathway. It</p> <p>3 wasn't -- I wasn't focused on the -- I wasn't</p> <p>4 focused on what particular activities the -- the</p> <p>5 ad agencies did.</p> <p>6 Q Okay. So sitting here today, do you</p> <p>7 have any understanding of how the ad agencies</p> <p>8 participate in the process of purchasing display</p> <p>9 ads from Google for the FAAs?</p> <p>10 And I'm not asking for what your</p> <p>11 understanding is. I'm simply asking whether you</p> <p>12 have an understanding of how they participate.</p> <p>13 A The -- the ad agencies facilitate the</p> <p>14 FAAs' purchases.</p> <p>15 Q Okay. Do you know how the FAAs</p> <p>16 facilitate the ad agencies -- the FAAs' purchases?</p> <p>17 A Again, I didn't focus on exactly what</p> <p>18 activities they did.</p> <p>19 Q Okay. So do you have an understanding</p> <p>20 of how the ad agencies facilitate the FAAs'</p> <p>21 purchases?</p> <p>22 A I don't have a detailed understanding.</p> |
| <p style="text-align: right;">Page 83</p> <p>1 A So my work focused on the payment flow</p> <p>2 process. I wasn't focused on the -- I wasn't</p> <p>3 focused on exactly what the ad agencies did in</p> <p>4 facilitating the FAAs' purchases of Google</p> <p>5 services.</p> <p>6 Q Okay. Paragraph 44 of Appendix E, page</p> <p>7 17, the sentence I just read is from that and it</p> <p>8 cites to two documents in Exhibit 26 -- footnote</p> <p>9 26.</p> <p>10 Did you review those two documents cited</p> <p>11 in footnote 26?</p> <p>12 A Yes.</p> <p>13 Q Did you come away with an understanding</p> <p>14 of how the ad agencies participate in the process</p> <p>15 of purchasing display ads from Google?</p> <p>16 A So a couple of clarifications. The -- I</p> <p>17 know there are two Bates stamps in footnote 26. I</p> <p>18 think it's actually the same document.</p> <p>19 The -- the -- the document, as it's</p> <p>20 noted in the footnote, is a contract between the</p> <p>21 Air Force and GSD&M.</p> <p>22 I was focused on -- my review of this</p> | <p style="text-align: right;">Page 85</p> <p>1 Q Do you have an understanding?</p> <p>2 A Yes.</p> <p>3 Q What is your understanding of how the</p> <p>4 FA- -- how the ad agencies facilitate the FAAs'</p> <p>5 purchases?</p> <p>6 A The -- the FAAs facilitate the FAAs'</p> <p>7 purchases -- for example, I believe that --</p> <p>8 that -- that they're the ones that log in, so to</p> <p>9 speak, to Google Ads or DV360.</p> <p>10 Q And what is your understanding based on</p> <p>11 that the ad agencies are the ones who log in, so</p> <p>12 to speak, to Google Ads or DV360?</p> <p>13 A I -- I can't remember where I gained</p> <p>14 that understanding.</p> <p>15 Q Okay. And it is your understanding</p> <p>16 sitting here today that Google sends invoices to</p> <p>17 ad agencies, correct?</p> <p>18 A Yes.</p> <p>19 Q And it is your understanding sitting</p> <p>20 here today that Google -- that within your damages</p> <p>21 calculations Google only sends invoices to ad</p> <p>22 agencies, not directly to the FAA, correct?</p> |

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| <p>1 MR. BRISKIN: Objection to form.</p> <p>2 THE WITNESS: One more time, please.</p> <p>3 BY MS. GOODMAN:</p> <p>4 Q Within your damages calculations, the</p> <p>5 transactions within your damages calculations, is</p> <p>6 it accurate that for all of those purchases Google</p> <p>7 sent invoices to an ad agency, not to the FAA?</p> <p>8 MR. BRISKIN: Objection to form.</p> <p>9 THE WITNESS: Yes.</p> <p>10 BY MS. GOODMAN:</p> <p>11 Q And for all of the transactions within</p> <p>12 your damages calculations, did you see any</p> <p>13 evidence that an FAA transmitted money directly to</p> <p>14 Google?</p> <p>15 MR. BRISKIN: Objection to form.</p> <p>16 THE WITNESS: With regard to the payment</p> <p>17 flow process, what I saw is that the FAAs cut</p> <p>18 checks to the ad agencies and the ad agencies cut</p> <p>19 checks to Google such that --</p> <p>20 BY MS. GOODMAN:</p> <p>21 Q What evidence --</p> <p>22 A -- such that in the end the FAAs paid</p> | <p>1 from an advertising agency, not from the FAA, but</p> <p>2 evidence of an advertising agency paying money to</p> <p>3 Google? What payment data are you referring to?</p> <p>4 A Perhaps it would be helpful to -- let me</p> <p>5 just point that -- let me go to my Appendix E and</p> <p>6 I -- I will -- well, I will go there.</p> <p>7 So, for example --</p> <p>8 Q Can you -- I'm sorry to interrupt, but</p> <p>9 can you just identify what page you're looking at?</p> <p>10 A I'm in -- I'm on pages 158 and 159.</p> <p>11 Q Thank you.</p> <p>12 Go ahead.</p> <p>13 A So, for example, in the IPG MediaOcean</p> <p>14 data I saw evidence of cuts being check -- or</p> <p>15 checks being cut from an ad agency to Google.</p> <p>16 Q Okay. And is it accurate that for no</p> <p>17 other of the payment purchase pathways reflected</p> <p>18 in your Appendix E do you include any evidence</p> <p>19 that an ad agency cut a check to Google?</p> <p>20 A I'd -- I'd have to go through each and</p> <p>21 every one. I don't -- I don't recall specifically</p> <p>22 the -- there were many invoices and much payment</p> |
| Page 87 | Page 89 |
| <p>1 100 percent of the charges -- of Google's charges.</p> <p>2 Q What evidence did you see that ad</p> <p>3 agencies cut checks to Google?</p> <p>4 A That would be in my Appendix E to the</p> <p>5 opening report.</p> <p>6 Q What kinds of documents did you believe</p> <p>7 were sufficient evidence to form the belief that</p> <p>8 the ad agencies cut checks to Google?</p> <p>9 MR. BRISKIN: Objection to form.</p> <p>10 THE WITNESS: That's -- that's my</p> <p>11 understanding from the payment flow process.</p> <p>12 BY MS. GOODMAN:</p> <p>13 Q And I'm asking what kinds of documents</p> <p>14 is your understanding based on. I'm not asking</p> <p>15 for a specific document, but what kinds of things</p> <p>16 did you see that lead you to believe the -- or</p> <p>17 leads you to the opinion that the ad agency cut a</p> <p>18 check to Google?</p> <p>19 A Is -- it would be, for example, the</p> <p>20 payment data and invoices that are listed in</p> <p>21 Appendix E.</p> <p>22 Q What payment data did you see from an --</p> | <p>1 data that I looked at. I just don't recall</p> <p>2 specifically --</p> <p>3 Q Okay.</p> <p>4 A -- in terms of -- I -- I recall on --</p> <p>5 for USPS we got a quite fulsome dataset, but I</p> <p>6 just -- I just don't recall specifically with</p> <p>7 regard to other pathways.</p> <p>8 Q If you saw payment data showing payments</p> <p>9 from an advertising agency to Google, would that</p> <p>10 be reflected in your Appendix E?</p> <p>11 MR. BRISKIN: Objection to form.</p> <p>12 THE WITNESS: It would be reflected in</p> <p>13 my Documents Relied Upon list, the documents that</p> <p>14 I relied upon.</p> <p>15 BY MS. GOODMAN:</p> <p>16 Q But it wouldn't be in Appendix E?</p> <p>17 A Appendix E is a -- are examples of</p> <p>18 walk-throughs that I performed with regard to the</p> <p>19 payment process. Appendix E includes documents</p> <p>20 related to those walk-throughs. But it's possible</p> <p>21 that I saw additional payment data outside of</p> <p>22 Appendix E.</p> |

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| <p style="text-align: right;">Page 90</p> <p>1 Q And just for the record, when you say</p> <p>2 "Appendix E," you're talking about Appendix E to</p> <p>3 the initial Respress report, correct?</p> <p>4 A Yes.</p> <p>5 Q And Appendix E to your rebuttal report</p> <p>6 is, in fact, the initial Respress report, correct?</p> <p>7 A Corrected for errata.</p> <p>8 Q Yes.</p> <p>9 A Yes. It's rather confusing.</p> <p>10 Q Okay. So could we talk about Appendix E</p> <p>11 to the Respress report in this deposition as</p> <p>12 Appendix E/E so we know what we're talking about?</p> <p>13 A Wait, wait, wait, wait. What do you</p> <p>14 want to call it? Wait. Sorry?</p> <p>15 Q Withdrawn.</p> <p>16 MR. BRISKIN: Was that a joke? Appendix</p> <p>17 2.</p> <p>18 BY MS. GOODMAN:</p> <p>19 Q Did you see any evidence in this case</p> <p>20 for purposes of your damages calculation that any</p> <p>21 FAA paid Google directly for the use of DV360?</p> <p>22 MR. BRISKIN: Objection to form.</p> | <p style="text-align: right;">Page 92</p> <p>1 BY MS. GOODMAN:</p> <p>2 Q May I --</p> <p>3 A -- US- --</p> <p>4 Q May I provide an understanding of -- let</p> <p>5 me tell you my understanding of "directly" and</p> <p>6 then maybe that will help you answer the question.</p> <p>7 A Okay.</p> <p>8 Q By "directly" I mean without the</p> <p>9 intervention of somebody -- of a medium or an</p> <p>10 agent.</p> <p>11 So did you see any evidence that any FAA</p> <p>12 paid Google directly for the use of DV360 for the</p> <p>13 transactions included in your damages</p> <p>14 calculations?</p> <p>15 MR. BRISKIN: Objection to form.</p> <p>16 THE WITNESS: Let me -- I'm not sure how</p> <p>17 that question is different from the questions you</p> <p>18 asked before in which I referred you to the IPG</p> <p>19 data for USPS.</p> <p>20 BY MS. GOODMAN:</p> <p>21 Q Okay. Let me try again.</p> <p>22 Did you see any evidence that any FAA</p> |
| <p style="text-align: right;">Page 91</p> <p>1 THE WITNESS: Sorry, are we talking</p> <p>2 about the FAA purchase pathways included in my</p> <p>3 damages analysis?</p> <p>4 BY MS. GOODMAN:</p> <p>5 Q Yes, ma'am.</p> <p>6 MR. BRISKIN: Same objection.</p> <p>7 THE WITNESS: What I saw was that --</p> <p>8 again, what I saw was that Google invoiced ad</p> <p>9 agency, ad agency invoiced FAA, FAA cut a check to</p> <p>10 the ad -- ad agency, and ad agency cut a check to</p> <p>11 Google.</p> <p>12 BY MS. GOODMAN:</p> <p>13 Q Okay. And so is it your testimony that</p> <p>14 you did not see any evidence of Google paying</p> <p>15 money -- strike that. Withdrawn.</p> <p>16 Is it accurate that you did not see any</p> <p>17 evidence that any FAA paid money to Google</p> <p>18 directly for the use of DV360?</p> <p>19 MR. BRISKIN: Objection to form.</p> <p>20 THE WITNESS: Sorry, sorry, I'm not --</p> <p>21 I'm not sure what you mean by "directly," but we</p> <p>22 just discussed in --</p> | <p style="text-align: right;">Page 93</p> <p>1 paid Google without the intervention of a medium</p> <p>2 or an agent for the use of DV360 for the</p> <p>3 transactions included in your damages calculation?</p> <p>4 MR. BRISKIN: Objection to form.</p> <p>5 THE WITNESS: So, again, my</p> <p>6 understanding is that Google invoiced the ad</p> <p>7 agencies, the ad agencies invoiced the FAAs, the</p> <p>8 FAAs cut checks to the ad agencies, and the ad</p> <p>9 agencies cut checks to Google.</p> <p>10 BY MS. GOODMAN:</p> <p>11 Q So based on what you saw, is it accurate</p> <p>12 that the FAAs used a medium or an agent in order</p> <p>13 to pay Google?</p> <p>14 A I'm not sure what you mean by "medium"</p> <p>15 or "agent."</p> <p>16 The -- the payment process by which the</p> <p>17 FAAs paid for their Google purchases -- the</p> <p>18 payment process involves ad agencies.</p> <p>19 Q And the ad agencies are in between -- in</p> <p>20 that payment process they are in between Google</p> <p>21 and the FAA, correct?</p> <p>22 MR. BRISKIN: Objection to form.</p> |

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| <p>1 THE WITNESS: Again, I'm not sure what</p> <p>2 you mean by "in between," but as I testified,</p> <p>3 Google invoices the ad agencies, ad agencies</p> <p>4 invoice the FAAs, FAA -- FAAs cut checks to the ad</p> <p>5 agencies, ad agencies cut checks to Google.</p> <p>6 BY MS. GOODMAN:</p> <p>7 Q Okay. I'm going to ask one more time</p> <p>8 just to see if you can answer the question as I've</p> <p>9 posed it. And if you can't, that's fine and I'll</p> <p>10 move to strike your answer and I'll call the</p> <p>11 court -- I'll bring this to the judge.</p> <p>12 But I'm asking a question to which</p> <p>13 you're not providing an answer and that is are the</p> <p>14 ad agencies in between the payment -- in the</p> <p>15 payment -- withdrawn.</p> <p>16 In the payment process which you have</p> <p>17 described, do the ad agencies sit in between</p> <p>18 Google and the FAA in order for Google to receive</p> <p>19 money from the FAA?</p> <p>20 MR. BRISKIN: Objection to form.</p> <p>21 THE WITNESS: Again, I -- I think I've</p> <p>22 explained my understanding of the process. I'm</p> | <p>1 would phrase it. I -- again, Google invoiced the</p> <p>2 ad agencies, ad agencies invoiced the FAAs, FAAs</p> <p>3 cut the checks to the ad agencies, ad agencies</p> <p>4 cut -- cut the checks to Google.</p> <p>5 MS. GOODMAN: Okay. I'll move to strike</p> <p>6 as nonresponsive.</p> <p>7 MR. BRISKIN: Can we take a quick break?</p> <p>8 MS. GOODMAN: Sure.</p> <p>9 VIDEO TECHNICIAN: Off the record at</p> <p>10 12:21.</p> <p>11 (Brief recess.)</p> <p>12 VIDEO TECHNICIAN: Back on the record at</p> <p>13 12:36.</p> <p>14 BY MS. GOODMAN:</p> <p>15 Q Ms. Lim, for every transaction that you</p> <p>16 include in the purchase pathways underlying your</p> <p>17 damages calculation, did you see any evidence that</p> <p>18 Google paid for the ads without the use of an ad</p> <p>19 agency? Withdrawn.</p> <p>20 For every transaction that you include</p> <p>21 in your purchase pathways underlying your damages</p> <p>22 calculations, did you see any evidence that the</p> |
| Page 95 | Page 97 |
| <p>1 not sure what you mean by "sit in between," but I</p> <p>2 think I've been very clear that the -- Google</p> <p>3 invoices the ad agencies, ad agencies invoice the</p> <p>4 FAA, FAAs cut the checks to the ad agencies, ad</p> <p>5 agencies cut the checks to Google.</p> <p>6 BY MS. GOODMAN:</p> <p>7 Q And in the process which you have</p> <p>8 described --</p> <p>9 A I mean, I -- I -- that's the way that I</p> <p>10 would describe the process.</p> <p>11 Q Okay.</p> <p>12 A So -- sorry.</p> <p>13 Q In the process which you have described</p> <p>14 it is correct that the ad agencies are in between</p> <p>15 Google and the FAAs, correct?</p> <p>16 MR. BRISKIN: Objection to form.</p> <p>17 THE WITNESS: You seem really -- you</p> <p>18 seem really interested in "in between" and, again,</p> <p>19 I'm not sure what "in between" means with regard</p> <p>20 to your -- your question.</p> <p>21 The way the invoicing process works</p> <p>22 is -- is as I've explained it and that's the way I</p> | <p>1 FAA paid for the ads without the use of an ad</p> <p>2 agency?</p> <p>3 A No.</p> <p>4 Q You relied on data produced by Google</p> <p>5 which you refer to as RFP60 data, correct?</p> <p>6 A Yes.</p> <p>7 Q Did you understand that the RFP60 data</p> <p>8 includes advertiser names which are input by</p> <p>9 customers?</p> <p>10 MR. BRISKIN: Objection to form.</p> <p>11 THE WITNESS: May I review my report to</p> <p>12 refresh my memory with regard to that?</p> <p>13 BY MS. GOODMAN:</p> <p>14 Q Sure. Which page of the report are you</p> <p>15 thinking of?</p> <p>16 A It's in the area of Figures 8 through</p> <p>17 10.</p> <p>18 So what I observed in the RFP60 data was</p> <p>19 there was some nonstandardization in terms of the</p> <p>20 information that was input into various fields</p> <p>21 that -- I'm not sure why there's</p> <p>22 nonstandardization -- non- -- nonstandardization.</p> |

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| <p style="text-align: right;">Page 98</p> <p>1 One reason could be because the -- the</p> <p>2 advertisers or the ad agencies assisting the</p> <p>3 advertisers could be putting in information into</p> <p>4 those fields in a nonstandard way.</p> <p>5 Q Did you have an understanding of the</p> <p>6 RFP60 data that the -- the information listed in</p> <p>7 the advertiser fields is not verified, curated, or</p> <p>8 cleaned by Google?</p> <p>9 MR. BRISKIN: Objection to form.</p> <p>10 THE WITNESS: I do not have an</p> <p>11 understanding of the process by which Google vets</p> <p>12 or doesn't vet the information that may be input</p> <p>13 either by Google or by others into its databases.</p> <p>14 BY MS. GOODMAN:</p> <p>15 Q Okay. Would it be important to you for</p> <p>16 purposes of your analysis to know whether the</p> <p>17 information for the advertiser identities within</p> <p>18 the RFP60 data is not verified, curated, or</p> <p>19 cleaned by Google?</p> <p>20 MR. BRISKIN: Objection to the form.</p> <p>21 THE WITNESS: Which field in particular</p> <p>22 are you talking about?</p> | <p style="text-align: right;">Page 100</p> <p>1 A Page 17? Sorry.</p> <p>2 Q Yes.</p> <p>3 Do you see paragraph 45?</p> <p>4 A I do.</p> <p>5 Q Okay. You write, "I identified FAAs in</p> <p>6 the RFP60 data and the TTD data and then</p> <p>7 identified specific combinations of FAAs and ad</p> <p>8 agencies."</p> <p>9 My question is what did you do to</p> <p>10 identify the FAAs in the RFP60 data?</p> <p>11 A So that's described in the rest of the</p> <p>12 paragraph.</p> <p>13 Q So you see a bunch of fields in the</p> <p>14 RFP60 data, and you referred to them as advertiser</p> <p>15 identifier variables, and then you used those</p> <p>16 variables to identify the FAAs.</p> <p>17 My question is how do you use the</p> <p>18 variables to identify the FAAs?</p> <p>19 MR. BRISKIN: Objection to form.</p> <p>20 THE WITNESS: So my process was that, as</p> <p>21 I described in my report, I first arrived at a --</p> <p>22 a bucket of advertisers with FAA-sounding words in</p> |
| <p style="text-align: right;">Page 99</p> <p>1 BY MS. GOODMAN:</p> <p>2 Q The fields listing the name of the</p> <p>3 advertiser customer.</p> <p>4 MR. BRISKIN: Objection to form.</p> <p>5 THE WITNESS: So the -- can you ask the</p> <p>6 question one more time? Sorry.</p> <p>7 BY MS. GOODMAN:</p> <p>8 Q Would it be important for you to know</p> <p>9 that the -- the fields including names of the</p> <p>10 advertising customer in RFP60 data is not</p> <p>11 verified, curated, or cleaned by Google?</p> <p>12 MR. BRISKIN: Objection to the form.</p> <p>13 THE WITNESS: The -- the -- no.</p> <p>14 BY MS. GOODMAN:</p> <p>15 Q Why not?</p> <p>16 MR. BRISKIN: Same objection.</p> <p>17 THE WITNESS: I didn't need to focus on</p> <p>18 the process of Google vetting information in the</p> <p>19 advertiser field.</p> <p>20 BY MS. GOODMAN:</p> <p>21 Q In paragraph 45 of Appendix E on page 17</p> <p>22 of the Respass initial report --</p> | <p style="text-align: right;">Page 101</p> <p>1 the advertiser identifier variables, and -- and</p> <p>2 this is described in my footnote 28, and I then</p> <p>3 limited my damages analysis to advertiser</p> <p>4 identi- -- identifier variables and, in fact, FAA</p> <p>5 purchase pathways, which I understand the United</p> <p>6 States is seeking damages for.</p> <p>7 BY MS. GOODMAN:</p> <p>8 Q Okay. So are the advertiser identifier</p> <p>9 variables, which are within your purchase pathways</p> <p>10 and which are thus within your damages</p> <p>11 calculation, those were all identified by the</p> <p>12 United States; is that right?</p> <p>13 MR. BRISKIN: Objection to form.</p> <p>14 THE WITNESS: I'm not -- I'm not sure I</p> <p>15 would quite phrase it that way. Let me -- let me</p> <p>16 try again.</p> <p>17 So I reviewed the RFP60 database and I</p> <p>18 saw FAA-sounding words in the advertiser</p> <p>19 identifier variables and -- and then -- so that's</p> <p>20 like a bigger bucket -- and then the United States</p> <p>21 instructed me to limit my damages analysis to a</p> <p>22 smaller bucket of FAA purchase pathways.</p> |

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| <p>1 report which identifies 155 pathways for potential</p> <p>2 inclusion in your damages calculations.</p> <p>3 A I'll take your representation that</p> <p>4 that's the number.</p> <p>5 Q Okay. And of those 155 pathways in your</p> <p>6 backup to Figure 11, it's accurate you exclude 131</p> <p>7 pathways at the United States' request, correct?</p> <p>8 A I -- I'll take your representation on</p> <p>9 the -- on the math. There are pathways that I</p> <p>10 excluded.</p> <p>11 There are pathways that I included</p> <p>12 because the United States is seeking damages on</p> <p>13 those pathways and there are pathways that I</p> <p>14 excluded because I understand the United States is</p> <p>15 not seeking damages on those pathways.</p> <p>16 Q Well, there are pathways that you --</p> <p>17 that the United States --</p> <p>18 A So --</p> <p>19 Q -- asked you to -- excuse me, my</p> <p>20 question --</p> <p>21 A Sorry.</p> <p>22 Q -- was not complete.</p> | <p>1 VIDEO TECHNICIAN: Back on the record at</p> <p>2 2:07.</p> <p>3 BY MS. GOODMAN:</p> <p>4 Q Ms. Lim, did the United States give you</p> <p>5 any facts upon which you relied in support of your</p> <p>6 exclusion of certain purchase pathways from your</p> <p>7 report?</p> <p>8 A No.</p> <p>9 Q Okay. Did the United States tell you to</p> <p>10 assume anything for purposes of your report upon</p> <p>11 which you relied in excluding the certain purchase</p> <p>12 pathways that the United States asked you to</p> <p>13 exclude?</p> <p>14 A That was a long one. Could you do that</p> <p>15 one again? Sorry.</p> <p>16 Q Did you rely on any assumptions provided</p> <p>17 by the United States as to why certain purchase</p> <p>18 pathways were excluded?</p> <p>19 A No.</p> <p>20 Q Did you do any analysis to confirm</p> <p>21 whether it was proper to exclude certain FAA</p> <p>22 purchase pathways from your damages calculation?</p> |
| Page 131 | Page 133 |
| <p>1 A Sorry.</p> <p>2 Q I'll restart the question.</p> <p>3 There are pathways -- there are certain</p> <p>4 FAA purchase pathways that the United States asked</p> <p>5 you to exclude, correct?</p> <p>6 A Yes.</p> <p>7 Q Okay. And there are 131 pathways -- FAA</p> <p>8 purchase pathways that the United States asked you</p> <p>9 to exclude, correct?</p> <p>10 A I'm happy to take your representation on</p> <p>11 the -- the number.</p> <p>12 Q Okay. Did the United States tell you</p> <p>13 any facts as to why they wanted those pathways</p> <p>14 excluded?</p> <p>15 MR. BRISKIN: Objection. I'm going to</p> <p>16 instruct the witness not to answer pursuant to the</p> <p>17 expert stipulation.</p> <p>18 MS. GOODMAN: Can we go off the record?</p> <p>19 MR. BRISKIN: Sure.</p> <p>20 VIDEO TECHNICIAN: We're going off the</p> <p>21 record at 2:05.</p> <p>22 (Brief recess.)</p> | <p>1 MR. BRISKIN: Objection to form.</p> <p>2 THE WITNESS: I'm not sure what you mean</p> <p>3 by "proper," but it would be -- my damages</p> <p>4 calculations include the FAA purchase pathways for</p> <p>5 which the United States is seeking damages and it</p> <p>6 seems reasonable to me that therefore I wouldn't</p> <p>7 be calculating damages on pathways that the United</p> <p>8 States is not seeking damages for.</p> <p>9 BY MS. GOODMAN:</p> <p>10 Q Okay. Did you do any analysis to figure</p> <p>11 out whether the United States could seek damages</p> <p>12 for the certain FAA purchase pathways that they</p> <p>13 told you to exclude from your calculations?</p> <p>14 MR. BRISKIN: Objection to form.</p> <p>15 THE WITNESS: What do you mean by they</p> <p>16 could seek damages for?</p> <p>17 BY MS. GOODMAN:</p> <p>18 Q Did you do any analysis to figure out</p> <p>19 whether the United States -- withdrawn.</p> <p>20 Did you do any analysis to figure out</p> <p>21 whether the pathways that the United States asked</p> <p>22 you to exclude otherwise met the criteria for</p> |

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| <p style="text-align: right;">Page 134</p> <p>1 purchases for which the United States is seeking</p> <p>2 damages?</p> <p>3 MR. BRISKIN: Objection to form.</p> <p>4 THE WITNESS: The -- the -- the criteria</p> <p>5 for inclusion is that the United States is seeking</p> <p>6 damages on included pathways in my damages</p> <p>7 calculation.</p> <p>8 BY MS. GOODMAN:</p> <p>9 Q So is it your testimony that the</p> <p>10 pathways for which the United States -- States is</p> <p>11 seeking damages is a result of the United States'</p> <p>12 instruction to you to include only those pathways?</p> <p>13 MR. BRISKIN: Objection to form.</p> <p>14 THE WITNESS: Maybe it would help if I</p> <p>15 explain my -- the process because I think that</p> <p>16 will answer the question.</p> <p>17 So in the course of my work I looked at</p> <p>18 the RFP60 data, I identified unique combinations</p> <p>19 of FAAs and ad agencies when there was information</p> <p>20 about an ad agency. And then with regard to those</p> <p>21 unique combinations, the United States asked me to</p> <p>22 limit my damages analysis to those pathways for</p> | <p style="text-align: right;">Page 136</p> <p>1 assumptions the United States told you to make for</p> <p>2 why those pathways are excluded?</p> <p>3 A No.</p> <p>4 Q I'm sorry, for why those amounts billed</p> <p>5 in '19 and '20 were excluded.</p> <p>6 A No.</p> <p>7 Q And you excluded unknown ad agency</p> <p>8 purchase pathways from your damages analysis,</p> <p>9 correct?</p> <p>10 A Yes.</p> <p>11 Q And you excluded nine unknown purchase</p> <p>12 pathways, correct?</p> <p>13 A I don't recall the -- the number.</p> <p>14 Q And you excluded the --</p> <p>15 A When you -- when you say "nine," are you</p> <p>16 referring to a part of my report?</p> <p>17 Q I'm referring again to your Figure 11</p> <p>18 backup.</p> <p>19 Have you reviewed that backup?</p> <p>20 A Yes.</p> <p>21 Q When did you last review the backup to</p> <p>22 Figure 11?</p> |
| <p style="text-align: right;">Page 135</p> <p>1 which they were seeking damages and, conversely,</p> <p>2 the United States asked me to exclude those</p> <p>3 pathways for which the United States is not</p> <p>4 seeking damages.</p> <p>5 BY MS. GOODMAN:</p> <p>6 Q And the United States instructed you to</p> <p>7 remove amounts available for services in 2019 and</p> <p>8 2020 from damages for the USPS Universal McCann,</p> <p>9 Matterkind, TTD pathway, correct?</p> <p>10 A Yes.</p> <p>11 Q And that's the USPS.2 pathway?</p> <p>12 A Hang tight. Sorry.</p> <p>13 Q Let me withdraw the question.</p> <p>14 For both USPS pathways, USPS.1 and 2,</p> <p>15 the United States instructed you to remove amounts</p> <p>16 billed for services in 2019 and 2020, correct?</p> <p>17 A Yes.</p> <p>18 Q Did you rely on any facts provided to</p> <p>19 you by the United States for why you excluded</p> <p>20 those pathways?</p> <p>21 A No.</p> <p>22 Q Did they -- did you rely on the</p> | <p style="text-align: right;">Page 137</p> <p>1 A I don't recall specifically.</p> <p>2 Q Okay. And the reason you excluded the</p> <p>3 unknown ad agency purchase pathways is because you</p> <p>4 could not confirm that the FAA paid the amounts</p> <p>5 that Google charged for ad tech services, correct?</p> <p>6 MR. BRISKIN: Objection to form.</p> <p>7 THE WITNESS: One more time.</p> <p>8 BY MS. GOODMAN:</p> <p>9 Q The reason you excluded the unknown ad</p> <p>10 agency purchase pathways is because you could not</p> <p>11 confirm that the FAA paid amounts that Google</p> <p>12 charged for ad tech services, correct?</p> <p>13 MR. BRISKIN: Objection to form.</p> <p>14 THE WITNESS: Correct.</p> <p>15 BY MS. GOODMAN:</p> <p>16 Q Other than the United States telling you</p> <p>17 to exclude a pathway, is there any other reason</p> <p>18 you excluded a purchase pathway from your damages</p> <p>19 calculation?</p> <p>20 A Well, as we just discussed, there are</p> <p>21 some unknown ad agency FAA purchase pathways which</p> <p>22 I excluded.</p> |

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| <p style="text-align: right;">Page 138</p> <p>1 Q Okay. Other than the United States</p> <p>2 telling you to exclude a pathway and your</p> <p>3 excluding a pathway due to the ad agency being</p> <p>4 unknown, is there any other reason you excluded a</p> <p>5 purchase pathway from your damages calculation?</p> <p>6 A I -- I just want to be really clear</p> <p>7 here. So in coming up with the list of unique FAA</p> <p>8 purchase pathways, I'm referring to display</p> <p>9 advertising or open web display advertising. It's</p> <p>10 possible that there are other FAA purchase</p> <p>11 pathways not included in my damages analysis that</p> <p>12 relate to out-of-scope spending.</p> <p>13 Q Okay. In paragraph 47 you write, "I</p> <p>14 refer to each unique combination of FAA, prime ad</p> <p>15 agency, and (as applicable) sub ad agency as an</p> <p>16 'FAA Purchase Pathway.'" So my question is in</p> <p>17 reference to "FAA Purchase Pathway" as you use it</p> <p>18 here in your report in paragraph 47.</p> <p>19 And my question is, other than the</p> <p>20 United States telling you to exclude an FAA</p> <p>21 purchase pathway and your excluding an FAA</p> <p>22 purchase pathway due to the ad agency being</p> | <p style="text-align: right;">Page 140</p> <p>1 MR. BRISKIN: Objection to form.</p> <p>2 THE WITNESS: Yes.</p> <p>3 BY MS. GOODMAN:</p> <p>4 Q Did you ask for data produced by other</p> <p>5 third-party DSPs in the course of your work from</p> <p>6 --</p> <p>7 MR. BRISKIN: Objection to form.</p> <p>8 BY MS. GOODMAN:</p> <p>9 Q -- your -- from the United States?</p> <p>10 MR. BRISKIN: Objection to form.</p> <p>11 THE WITNESS: I -- I asked for a lot of</p> <p>12 data. I don't recall specifically the answer to</p> <p>13 this question.</p> <p>14 BY MS. GOODMAN:</p> <p>15 Q Okay. Can we turn to Figure 6 of your</p> <p>16 report.</p> <p>17 It's accurate that Figure 6 reflects the</p> <p>18 variables in Trade Desk data that filters -- the</p> <p>19 available filters on those variables and the</p> <p>20 filters that you chose to apply for purposes of</p> <p>21 your damages calculation, correct?</p> <p>22 A Yes.</p> |
| <p style="text-align: right;">Page 139</p> <p>1 unknown, is there any other reason you excluded</p> <p>2 an -- an FAA purchase pathway from your damages</p> <p>3 calculation?</p> <p>4 MR. BRISKIN: Objection to form.</p> <p>5 THE WITNESS: No.</p> <p>6 BY MS. GOODMAN:</p> <p>7 Q Okay. Some of the FAA purchase pathways</p> <p>8 for which you calculate damages include The Trade</p> <p>9 Desk, correct?</p> <p>10 A Yes.</p> <p>11 Q And The Trade Desk is a DSP, correct?</p> <p>12 A Yes.</p> <p>13 Q For what reason did you not include any</p> <p>14 other DSP that is not Google in your damages</p> <p>15 analysis?</p> <p>16 MR. BRISKIN: Objection to form.</p> <p>17 THE WITNESS: I don't believe I had the</p> <p>18 data to do that.</p> <p>19 BY MS. GOODMAN:</p> <p>20 Q Is it your understanding that no other</p> <p>21 third-party DSP produced data from which you could</p> <p>22 estimate damages?</p> | <p style="text-align: right;">Page 141</p> <p>1 MR. BRISKIN: Objection to form.</p> <p>2 BY MS. GOODMAN:</p> <p>3 Q Okay. And under "SupplyVendor" you have</p> <p>4 "google" and then an asterisk, correct?</p> <p>5 A Yes.</p> <p>6 Q And the asterisk denotes many other</p> <p>7 supply vendors, right?</p> <p>8 A Yes.</p> <p>9 Q Do you know how many other supply</p> <p>10 vendors were reflected in The Trade Desk data?</p> <p>11 A I don't recall.</p> <p>12 Q Does it sound accurate to you that there</p> <p>13 were over 100 different vendors -- supply vendors</p> <p>14 reflected in The Trade Desk data?</p> <p>15 MR. BRISKIN: Objection to form.</p> <p>16 THE WITNESS: I don't recall one way or</p> <p>17 the other.</p> <p>18 BY MS. GOODMAN:</p> <p>19 Q No reason to doubt my statement that</p> <p>20 there were over a hundred different vendors</p> <p>21 reflected in The Trade Desk data?</p> <p>22 MR. BRISKIN: Objection to form.</p> |

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| <p style="text-align: right;">Page 170</p> <p>1 fractions are similar?</p> <p>2 MR. BRISKIN: Objection. I think that</p> <p>3 really goes to a communication and I'll instruct</p> <p>4 the witness not to answer.</p> <p>5 You can rephrase.</p> <p>6 MS. GOODMAN: I object to that. It's</p> <p>7 exactly what she just said. I just used her exact</p> <p>8 language.</p> <p>9 MR. BRISKIN: And you asked for a</p> <p>10 communication and I instructed her not to answer.</p> <p>11 BY MS. GOODMAN:</p> <p>12 Q You don't recall seeing anything</p> <p>13 provided to you that is consistent with the notion</p> <p>14 that the fractions are similar between TTD and</p> <p>15 AdX -- I'm sorry, TTD and DV360, correct?</p> <p>16 MR. BRISKIN: Objection. Form.</p> <p>17 THE WITNESS: I'm -- I'm not sure how</p> <p>18 this question is different from your previous</p> <p>19 questions, but let me -- let me try again just so</p> <p>20 I can be clearer.</p> <p>21 MS. GOODMAN: Move to strike everything</p> <p>22 before she begins answering the question.</p> | <p style="text-align: right;">Page 172</p> <p>1 THE WITNESS: I certainly didn't see</p> <p>2 anything inconsistent. I may have seen</p> <p>3 something -- documents that were consistent and</p> <p>4 may not have cited that here.</p> <p>5 BY MS. GOODMAN:</p> <p>6 Q But you don't recall, do you?</p> <p>7 MR. BRISKIN: Objection to form.</p> <p>8 THE WITNESS: Sorry, I think I answered</p> <p>9 this question. Let me -- let me try again because</p> <p>10 perhaps I wasn't clear.</p> <p>11 MS. GOODMAN: Move to strike.</p> <p>12 The question is withdrawn.</p> <p>13 MR. BRISKIN: Can I take a quick break</p> <p>14 in the next five minutes, please.</p> <p>15 MS. GOODMAN: Let's take a break.</p> <p>16 MR. BRISKIN: Off the record at 3:03.</p> <p>17 (Brief recess.)</p> <p>18 VIDEO TECHNICIAN: Back on the record at</p> <p>19 3:24.</p> <p>20 BY MS. GOODMAN:</p> <p>21 Q Ms. Lim, would you turn to paragraph 59</p> <p>22 of the Respress initial report, which is on page</p> |
| <p style="text-align: right;">Page 171</p> <p>1 MR. BRISKIN: We'll take exception to</p> <p>2 that and all your other motions to strike which we</p> <p>3 think are not well founded.</p> <p>4 Is there a question pending?</p> <p>5 BY MS. GOODMAN:</p> <p>6 Q Are you going to answer the question?</p> <p>7 A Sorry, was there a question pending?</p> <p>8 Q Yes.</p> <p>9 A Sorry, I did not --</p> <p>10 Q You don't recall seeing anything</p> <p>11 provided to you that is consistent with the notion</p> <p>12 that the fraction of AdX take is similar between</p> <p>13 TTD and DV360, correct?</p> <p>14 MR. BRISKIN: Objection to form.</p> <p>15 THE WITNESS: I don't recall one way or</p> <p>16 the other.</p> <p>17 BY MS. GOODMAN:</p> <p>18 Q So therefore you don't recall seeing</p> <p>19 anything that is consistent or inconsistent with</p> <p>20 the notion that the fraction of AdX take is</p> <p>21 similar between TTD and DV360, correct?</p> <p>22 MR. BRISKIN: Objection to form.</p> | <p style="text-align: right;">Page 173</p> <p>1 23.</p> <p>2 A I'm there.</p> <p>3 Q Okay. The last full sentence in that</p> <p>4 paragraph on this page says, "Amounts that Google</p> <p>5 refunds to its advertisers should not be included</p> <p>6 in the damages calculations and I therefore remove</p> <p>7 them."</p> <p>8 Did I read that right?</p> <p>9 A Yes.</p> <p>10 Q Why is it your opinion that amounts that</p> <p>11 Google refunds to its advertisers should not be</p> <p>12 included in the damages calculations?</p> <p>13 A If an advertiser -- for -- for example,</p> <p>14 if instead of paying a hundred dollars to purchase</p> <p>15 ads an advertiser pays \$99 to purchase ads, then I</p> <p>16 would want the \$99 to be the input into my damages</p> <p>17 calculation.</p> <p>18 Q And why is that?</p> <p>19 A Because the advertiser paid \$99 instead</p> <p>20 of a hundred dollars.</p> <p>21 Q Okay. Is it important for purposes of</p> <p>22 calculating damages to account only for what was</p> |

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| <p style="text-align: right;">Page 174</p> <p>1 actually paid by the person claiming damages?</p> <p>2 MR. BRISKIN: Objection to form.</p> <p>3 THE WITNESS: It depends on the facts</p> <p>4 and circumstances.</p> <p>5 BY MS. GOODMAN:</p> <p>6 Q Do you agree that overcharge damages are</p> <p>7 a measure of the difference between the price the</p> <p>8 plaintiff actually paid and the price that they</p> <p>9 would have paid in the but-for world?</p> <p>10 MR. BRISKIN: Objection to form.</p> <p>11 THE WITNESS: Yes.</p> <p>12 BY MS. GOODMAN:</p> <p>13 Q And do you agree the proper way to</p> <p>14 calculate damages in an antitrust case is to</p> <p>15 determine the difference between the prices</p> <p>16 plaintiff actually paid and the prices the</p> <p>17 plaintiff would have paid in the but-for world?</p> <p>18 MR. BRISKIN: Objection to form.</p> <p>19 THE WITNESS: I think it would depend on</p> <p>20 the facts and circumstances in the particular</p> <p>21 antitrust case.</p> <p>22 BY MS. GOODMAN:</p> | <p style="text-align: right;">Page 176</p> <p>1 I have calculated damages is the difference</p> <p>2 between the AdX take and the but-for take.</p> <p>3 MS. GOODMAN: Move to strike as</p> <p>4 nonresponsive.</p> <p>5 BY MS. GOODMAN:</p> <p>6 Q Do you agree that the typical measure of</p> <p>7 damages is the difference between the actual price</p> <p>8 paid and the presumed competitive price in the</p> <p>9 but-for world?</p> <p>10 MR. BRISKIN: Objection to form.</p> <p>11 THE WITNESS: I'm sorry, what was your</p> <p>12 question?</p> <p>13 BY MS. GOODMAN:</p> <p>14 Q Do you agree that the typical measure of</p> <p>15 damages is the difference between the actual price</p> <p>16 paid and the presumed competitive price in the</p> <p>17 but-for world?</p> <p>18 MR. BRISKIN: Objection to form.</p> <p>19 THE WITNESS: It depends on -- it --</p> <p>20 it -- the facts and circumstances.</p> <p>21 BY MS. GOODMAN:</p> <p>22 Q Are you measuring overcharge damages in</p> |
| <p style="text-align: right;">Page 175</p> <p>1 Q Okay. How about in this antitrust case?</p> <p>2 Do you agree that in this antitrust case the</p> <p>3 proper way to calculate damages is to determine</p> <p>4 the difference between the prices the plaintiff,</p> <p>5 here the United States, actually paid and the</p> <p>6 prices the United States would have paid in the</p> <p>7 but-for world?</p> <p>8 MR. BRISKIN: Objection to form.</p> <p>9 THE WITNESS: So my damages calculation</p> <p>10 takes the difference between the AdX take rate --</p> <p>11 sorry, the AdX take and the but-for take in this</p> <p>12 circumstance.</p> <p>13 MS. GOODMAN: Okay. Move to strike as</p> <p>14 nonresponsive.</p> <p>15 BY MS. GOODMAN:</p> <p>16 Q Do you agree that in this case the way</p> <p>17 to actually calculate damages is to determine the</p> <p>18 difference between the prices the United States</p> <p>19 actually paid and the prices the -- the plaintiff</p> <p>20 would have paid in the but-for world?</p> <p>21 MR. BRISKIN: Objection to form.</p> <p>22 THE WITNESS: In -- in this case the way</p> | <p style="text-align: right;">Page 177</p> <p>1 this case?</p> <p>2 A Yes.</p> <p>3 Q Okay. And you agree that there's a</p> <p>4 difference between -- strike -- withdrawn.</p> <p>5 You agree that there can be a difference</p> <p>6 between an amount that is invoiced and an amount</p> <p>7 that is in fact paid, correct?</p> <p>8 A As a general matter, yes.</p> <p>9 Q Okay. And as a general matter, there</p> <p>10 can be differences between the amount invoiced and</p> <p>11 the amount paid for a variety of reasons, correct?</p> <p>12 A As a general matter.</p> <p>13 Q You agree as a general matter?</p> <p>14 A I do.</p> <p>15 Q Is one of the reasons that an invoice</p> <p>16 could be different from the amount paid because</p> <p>17 the person paying the invoice disputes the</p> <p>18 invoiced amount?</p> <p>19 A That could be one reason.</p> <p>20 Q Did you see any evidence in this case</p> <p>21 suggesting or showing that the invoice amount was</p> <p>22 not the amount paid?</p> |

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| <p>1 A No.</p> <p>2 Q Did you review any testimony of any</p> <p>3 federal agency advertiser in this case?</p> <p>4 A Yes.</p> <p>5 Q Where is that listed in your report?</p> <p>6 A My Documents Relied Upon list is a list</p> <p>7 of documents that I relied upon in forming the</p> <p>8 opinions in my report.</p> <p>9 In addition to the list of documents in</p> <p>10 the Documents Relied Upon list, there are many</p> <p>11 other documents that I considered in forming my</p> <p>12 conclusions and the FAA depositions would have</p> <p>13 been amongst the documents I considered.</p> <p>14 Q Okay. But you did not rely upon any FAA</p> <p>15 deposition testimony; is that accurate?</p> <p>16 A I think that's right.</p> <p>17 Q Did you review the deposition testimony</p> <p>18 of the United States Army?</p> <p>19 A Myself or my staff would have reviewed</p> <p>20 that.</p> <p>21 Q Did you review it?</p> <p>22 A So the way I think about my staff is</p> | <p>1 case that the United States Army received a</p> <p>2 request for equitable adjustment from its ad</p> <p>3 agency because the ad agency exceeded its</p> <p>4 authorized spending limit on advertising?</p> <p>5 MR. BRISKIN: Objection to form.</p> <p>6 THE WITNESS: Again, the phrase -- what</p> <p>7 was it -- equitable adjustment doesn't ring a</p> <p>8 bell.</p> <p>9 BY MS. GOODMAN:</p> <p>10 Q Okay. Are you aware of any evidence in</p> <p>11 this case that the United States Army's</p> <p>12 advertising agency exceeded its authorized</p> <p>13 spending limit on advertising?</p> <p>14 MR. BRISKIN: Objection to form.</p> <p>15 THE WITNESS: That's not something I</p> <p>16 focused on in my analysis.</p> <p>17 BY MS. GOODMAN:</p> <p>18 Q Okay. Are you aware of any evidence</p> <p>19 whether, as I've described, whether or not you</p> <p>20 focused on it?</p> <p>21 MR. BRISKIN: Objection to form.</p> <p>22 THE WITNESS: Not sitting here today.</p> |
| Page 179 | Page 181 |
| <p>1 that they are my arms and legs, so to speak, and</p> <p>2 if -- if I've directed them to review it and</p> <p>3 they've reviewed it, I mean, in my mind I've</p> <p>4 reviewed it. So I'm -- my -- I didn't personally</p> <p>5 review it if that -- if that's what you're asking</p> <p>6 me, my staff would have reviewed it.</p> <p>7 Q Okay. So you didn't personally review</p> <p>8 the Army testimony, correct?</p> <p>9 A I don't believe so.</p> <p>10 Q Are you familiar with the phrase</p> <p>11 equitable -- "request for equitable adjustment"?</p> <p>12 A It doesn't ring a bell.</p> <p>13 Q So you aren't aware of the fact that in</p> <p>14 this case the United States Army testified --</p> <p>15 testified about how its ad agency exceeded its</p> <p>16 authorized spending limit on advertising? You</p> <p>17 aren't aware of that, correct?</p> <p>18 MR. BRISKIN: Objection to form.</p> <p>19 THE WITNESS: Sorry, could you ask the</p> <p>20 question one more time?</p> <p>21 BY MS. GOODMAN:</p> <p>22 Q Are you aware of any evidence in this</p> | <p>1 BY MS. GOODMAN:</p> <p>2 Q And are you aware of any evidence that</p> <p>3 in the case where the United States Army's ad</p> <p>4 agency exceeded its authorized spending limit, it</p> <p>5 was the advertising agency who had to pay the</p> <p>6 digital ad vendors, not the Army?</p> <p>7 MR. BRISKIN: Objection to form.</p> <p>8 THE WITNESS: What I saw in my work in</p> <p>9 the performance of my walk-throughs of each FAA</p> <p>10 purchase pathway was that all amounts charged by</p> <p>11 Google were paid by the FAAs.</p> <p>12 MS. GOODMAN: I move to strike as</p> <p>13 nonresponsive.</p> <p>14 BY MS. GOODMAN:</p> <p>15 Q Are you aware of any evidence in this</p> <p>16 case that the U.S. Army's ad agency exceeded its</p> <p>17 authorized spending limit and thus the ad agency</p> <p>18 had to pay digital ad vendors, not the Army?</p> <p>19 MR. BRISKIN: Objection to form.</p> <p>20 THE WITNESS: I guess what I'm getting a</p> <p>21 little hung up on is you say in your question that</p> <p>22 the ad agencies paid the vendor, such as Google,</p> |

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| <p style="text-align: right;">Page 226</p> <p>1 BY MS. GOODMAN:</p> <p>2 Q It was a better fit for what you were</p> <p>3 doing?</p> <p>4 MR. BRISKIN: Objection to form.</p> <p>5 THE WITNESS: Yes.</p> <p>6 BY MS. GOODMAN:</p> <p>7 Q You calculated damages that would be</p> <p>8 owed to the United States by Google for a range of</p> <p>9 AdX but-for take rate percentages, correct?</p> <p>10 A One more time.</p> <p>11 Q You calculated damages that would be</p> <p>12 owed to the United States by Google for a range of</p> <p>13 AdX but-for take rate percentages, correct?</p> <p>14 MR. BRISKIN: Objection to form.</p> <p>15 THE WITNESS: Are you referring to</p> <p>16 something specific in my report?</p> <p>17 BY MS. GOODMAN:</p> <p>18 Q Not that I can immediately recall. I'm</p> <p>19 just asking if you calculated damages that would</p> <p>20 be owed to the United States by Google for a range</p> <p>21 of AdX but-for take rate percentages, correct?</p> <p>22 MR. BRISKIN: Objection to form.</p> | <p style="text-align: right;">Page 228</p> <p>1 A No.</p> <p>2 Q Without telling me what you discussed,</p> <p>3 did you discuss Dr. Simcoe's deposition testimony</p> <p>4 with anybody?</p> <p>5 MR. BRISKIN: Objection to form.</p> <p>6 THE WITNESS: I'm not sure if that gets</p> <p>7 into conferences -- substance of conversations</p> <p>8 with counsel or my staff.</p> <p>9 BY MS. GOODMAN:</p> <p>10 Q I'm not asking for the substance. I'm</p> <p>11 asking you a yes or no question.</p> <p>12 Did you discuss Dr. Simcoe's deposition</p> <p>13 testimony with anybody?</p> <p>14 MR. BRISKIN: Objection to form.</p> <p>15 THE WITNESS: Yes.</p> <p>16 BY MS. GOODMAN:</p> <p>17 Q Okay. And you are aware that Dr. Simcoe</p> <p>18 does not opine that a 10 percent but-for take rate</p> <p>19 is appropriate on a stand-alone basis, correct?</p> <p>20 MR. BRISKIN: Objection to form.</p> <p>21 THE WITNESS: I'm -- I didn't read his</p> <p>22 deposition, so if you're referring to something he</p> |
| <p style="text-align: right;">Page 227</p> <p>1 THE WITNESS: Yes.</p> <p>2 BY MS. GOODMAN:</p> <p>3 Q Okay. And one of those was 10 percent,</p> <p>4 right?</p> <p>5 A Yes.</p> <p>6 Q And one of those was 16.2 percent?</p> <p>7 A Yes.</p> <p>8 Q And one of those was 16.6 percent?</p> <p>9 A Yes.</p> <p>10 Q And you understood that Dr. Simcoe</p> <p>11 calculated a but-for take rate of 16.2 percent,</p> <p>12 correct?</p> <p>13 A Yes.</p> <p>14 Q And you understand he calculated a</p> <p>15 but-for take rate of 16.6 percent, correct?</p> <p>16 A Yes.</p> <p>17 Q And you understand Professor Simcoe did</p> <p>18 not calculate a but-for take rate of 10 percent,</p> <p>19 correct?</p> <p>20 A Yes.</p> <p>21 Q Did you read Dr. Simcoe's deposition</p> <p>22 testimony?</p> | <p style="text-align: right;">Page 229</p> <p>1 said in his deposition, then I'm -- I wouldn't</p> <p>2 be -- I wouldn't be familiar with that.</p> <p>3 BY MS. GOODMAN:</p> <p>4 Q I'm not referring to what he said in his</p> <p>5 deposition. I'm asking are you aware that</p> <p>6 Dr. Simcoe does not opine that a 10 percent</p> <p>7 but-for take rate is an appropriate measure of a</p> <p>8 but-for take rate?</p> <p>9 MR. BRISKIN: Objection to form.</p> <p>10 THE WITNESS: Okay. So if -- I think if</p> <p>11 you're asking me about what's in Dr. Simcoe's</p> <p>12 reports, my understanding is that he did not -- he</p> <p>13 estimated various but-for take rates and 10</p> <p>14 percent is not one of those take rates -- but- --</p> <p>15 but-for take rates.</p> <p>16 BY MS. GOODMAN:</p> <p>17 Q Okay. Are you aware that Professor</p> <p>18 Simcoe testified in deposition that a 10 percent</p> <p>19 but-for take rate -- take rate is not a conclusion</p> <p>20 he reaches about the take rate in the but-for</p> <p>21 world?</p> <p>22 MR. BRISKIN: Objection to form.</p> |

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| <p style="text-align: right;">Page 230</p> <p>1 THE WITNESS: As I just testified, I --</p> <p>2 I didn't read his deposition, so I don't know what</p> <p>3 he said in it.</p> <p>4 BY MS. GOODMAN:</p> <p>5 Q Okay. But you had conversations about</p> <p>6 his deposition with individuals, so I'm just</p> <p>7 asking if you have an awareness about what</p> <p>8 Professor Simcoe testified in deposition, that he</p> <p>9 is not offering an opinion that the but-for take</p> <p>10 rate is 10 percent?</p> <p>11 MR. BRISKIN: Objection to form.</p> <p>12 BY MS. GOODMAN:</p> <p>13 Q Are you aware of that?</p> <p>14 A I -- I don't have that awareness.</p> <p>15 Q Okay. You have no opinion as to the</p> <p>16 appropriateness of any of the but-for take rates</p> <p>17 you apply in your damages calculation, correct?</p> <p>18 A I did not do an independent evaluation</p> <p>19 of the but-for take rate.</p> <p>20 Q Okay. And you have no opinion as to the</p> <p>21 appropriateness of any but-for take rate, correct?</p> <p>22 MR. BRISKIN: Objection to form.</p> | <p style="text-align: right;">Page 232</p> <p>1 A Not sitting here today. It's not</p> <p>2 something I focused on.</p> <p>3 Q Okay. Did the United States -- did you</p> <p>4 rely on any facts communicated to you by the</p> <p>5 United States in applying a 10 percent but-for</p> <p>6 take rate in your calculations?</p> <p>7 A One more time.</p> <p>8 Q Did you rely on any facts communicated</p> <p>9 to you by the United States in applying a</p> <p>10 10 percent but-for take rate in your calculations?</p> <p>11 A No.</p> <p>12 Q Okay. Let's turn to paragraph 56 of the</p> <p>13 Respress initial report.</p> <p>14 A Yes, I'm there.</p> <p>15 Q And you write in the first sentence,</p> <p>16 "For each FAA Purchase Pathway except CMS.1,</p> <p>17 CMS.2, NHTSA.1, and NHTSA.2, I selected a number</p> <p>18 of transactions of open web display advertising</p> <p>19 and confirmed that the FAA paid for those</p> <p>20 transactions."</p> <p>21 Did I read that correctly?</p> <p>22 A Yes.</p> |
| <p style="text-align: right;">Page 231</p> <p>1 THE WITNESS: I do not.</p> <p>2 BY MS. GOODMAN:</p> <p>3 Q And so the United States instructed you</p> <p>4 to use an alternative AdX but-for take rate of</p> <p>5 10 percent, correct?</p> <p>6 A Yes.</p> <p>7 Q Are you aware of any facts that support</p> <p>8 application of a 10 percent but-for take rate?</p> <p>9 MR. BRISKIN: I'll just instruct the</p> <p>10 witness not to answer with regard to</p> <p>11 communications with counsel, but you can answer.</p> <p>12 THE WITNESS: My understanding is that</p> <p>13 the United States intends on presenting evidence</p> <p>14 with regard to the 10 percent but-for take rate at</p> <p>15 trial, but I haven't performed an independent</p> <p>16 analysis of that 10 percent. I haven't, for</p> <p>17 example, searched in databases looking for</p> <p>18 10 percent.</p> <p>19 BY MS. GOODMAN:</p> <p>20 Q So you aren't personally aware of any</p> <p>21 facts that would support application of that</p> <p>22 but-for take rate?</p> | <p style="text-align: right;">Page 233</p> <p>1 Q You did not select transactions for the</p> <p>2 CMS and NHTSA pathways to review in order to</p> <p>3 confirm that the FAA paid for those transactions,</p> <p>4 correct?</p> <p>5 MR. BRISKIN: Objection to form.</p> <p>6 THE WITNESS: I did not perform</p> <p>7 walk-throughs of those FAA purchase pathways</p> <p>8 because there was insufficient data/documents in</p> <p>9 the record to do so.</p> <p>10 BY MS. GOODMAN:</p> <p>11 Q And so is it accurate that you were not</p> <p>12 able to confirm that the FAAs paid for the</p> <p>13 transactions reflected in the two CMS and two</p> <p>14 NHTSA pathways?</p> <p>15 MR. BRISKIN: Objection to form.</p> <p>16 THE WITNESS: I was not able to do so.</p> <p>17 BY MS. GOODMAN:</p> <p>18 Q Did you attempt to verify that CMS or</p> <p>19 NHTSA paid for the transactions reflected in those</p> <p>20 four purchase pathways?</p> <p>21 MR. BRISKIN: Objection to form.</p> <p>22 THE WITNESS: The documents produced in</p> |

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| <p style="text-align: right;">Page 234</p> <p>1 the record did not -- were insufficient to perform</p> <p>2 a walk-through as I did for the other purchase</p> <p>3 pathways.</p> <p>4 BY MS. GOODMAN:</p> <p>5 Q And so you didn't see any documents or</p> <p>6 data in the record to show actual transmission of</p> <p>7 payments from those FAAs to anybody; is that</p> <p>8 accurate?</p> <p>9 MR. BRISKIN: Objection to form.</p> <p>10 THE WITNESS: No. No, that's not</p> <p>11 accurate.</p> <p>12 BY MS. GOODMAN:</p> <p>13 Q Okay. What documents did you see in the</p> <p>14 record that showed that payments were made from</p> <p>15 those FAAs to an ad agency?</p> <p>16 MR. BRISKIN: Objection to form.</p> <p>17 THE WITNESS: I don't recall the exact</p> <p>18 documents.</p> <p>19 BY MS. GOODMAN:</p> <p>20 Q Okay. But it's your testimony you saw</p> <p>21 evidence in the record of payments going from CMS</p> <p>22 to an ad agency?</p> | <p style="text-align: right;">Page 236</p> <p>1 THE WITNESS: It would have been during</p> <p>2 the time that I was assisting Dr. Respass in</p> <p>3 preparing his report.</p> <p>4 BY MS. GOODMAN:</p> <p>5 Q Okay. And after you learned that you</p> <p>6 would be testifying as an expert in this case, you</p> <p>7 didn't do anything to check your recollection --</p> <p>8 to check the work that had been done prior to your</p> <p>9 coming in as the testifying expert to figure out</p> <p>10 what was insufficient about the data that we're</p> <p>11 discussing?</p> <p>12 MR. BRISKIN: Objection to form.</p> <p>13 THE WITNESS: I wouldn't characterize it</p> <p>14 that way. I was very involved with Dr. Respass</p> <p>15 and Brattle staff during the preparation of his</p> <p>16 report and there was lots of -- lots of checking</p> <p>17 with regard to Dr. Respass' analyses and</p> <p>18 conclusions and statements in his report.</p> <p>19 I felt -- I -- I felt comfortable with</p> <p>20 adopting those analyses and conclusions given my</p> <p>21 awareness of -- given my work with Dr. Respass and</p> <p>22 awareness of the entire process, not just</p> |
| <p style="text-align: right;">Page 235</p> <p>1 A That is my recollection.</p> <p>2 Q Okay. And it's your testimony you saw</p> <p>3 evidence in the record of payments going from</p> <p>4 NHTSA to an ad agency?</p> <p>5 A Same answer. That's my recollection.</p> <p>6 Q So what was insufficient about what you</p> <p>7 saw in the record in order to confirm that those</p> <p>8 two FAAs paid for the transactions reflected in</p> <p>9 the four purchase pathways we're discussing?</p> <p>10 A I don't -- I don't recall exactly what</p> <p>11 was insufficient. The -- the process of each</p> <p>12 walk-through requires at -- at least ad agency</p> <p>13 invoices and FAA payments.</p> <p>14 My recollection is that there were --</p> <p>15 there was missing data in -- in one of those. I</p> <p>16 don't recall exactly. I just recall that there</p> <p>17 was insufficient data.</p> <p>18 Q When did you last look at the data</p> <p>19 available to you in order to confirm whether CMS</p> <p>20 or NHTSA paid for the transactions reflected in</p> <p>21 the four purchase pathways we're discussing?</p> <p>22 MR. BRISKIN: Objection to form.</p> | <p style="text-align: right;">Page 237</p> <p>1 awareness but familiarity and -- and being part of</p> <p>2 that process, including the checking process.</p> <p>3 BY MS. GOODMAN:</p> <p>4 Q Would Dr. Respass be able to tell me</p> <p>5 what was insufficient about the data that -- such</p> <p>6 that he could not confirm that the FAAs paid for</p> <p>7 the transactions reflected in the four purchase</p> <p>8 pathways we're discussing?</p> <p>9 MR. BRISKIN: Objection to form.</p> <p>10 THE WITNESS: I don't believe he would</p> <p>11 be able to recall any better than I would. There</p> <p>12 were hundreds, maybe thousands of invoices that we</p> <p>13 reviewed and many different purchase pathways,</p> <p>14 some of which are quite complex to do the</p> <p>15 walk-throughs on.</p> <p>16 I recall that, again, there was missing</p> <p>17 information in these pathways, but I don't recall</p> <p>18 exactly -- the exact invoices, for example, that</p> <p>19 were missing or the exact payment data on -- that</p> <p>20 were missing.</p> <p>21 BY MS. GOODMAN:</p> <p>22 Q And it's accurate that for none of these</p> |

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| <p style="text-align: right;">Page 238</p> <p>1 purchase pathways does your report anywhere</p> <p>2 identify payment data showing that the FAAs paid</p> <p>3 for the transactions reflected in -- or included</p> <p>4 within the CMS and NHTSA purchase pathways,</p> <p>5 correct?</p> <p>6 MR. BRISKIN: Objection to form.</p> <p>7 THE WITNESS: One more time.</p> <p>8 Sorry, I just hadn't thought of my</p> <p>9 report that way. Go ahead.</p> <p>10 BY MS. GOODMAN:</p> <p>11 Q There is no statement in your report</p> <p>12 identifying payment data which shows CMS or NHTSA</p> <p>13 paid for the transactions included within the CMS</p> <p>14 and NHTSA purchase pathways, correct?</p> <p>15 MR. BRISKIN: Objection to form.</p> <p>16 THE WITNESS: I can't think of such a</p> <p>17 statement or something in my report that lists</p> <p>18 that sitting here today.</p> <p>19 BY MS. GOODMAN:</p> <p>20 Q Okay. In your --</p> <p>21 A It's not something that -- it's not</p> <p>22 something that I relied upon.</p> | <p style="text-align: right;">Page 240</p> <p>1 Q Thirty-three of Figure 16.</p> <p>2 A I'm there.</p> <p>3 Q Okay. And for CMS your damages</p> <p>4 calculations include \$8.4 million in AdX revenue,</p> <p>5 correct?</p> <p>6 A You're looking at the 8478727?</p> <p>7 Q Yes.</p> <p>8 A I used the -- that amount in deriving my</p> <p>9 damages amount.</p> <p>10 Q Right. And you used the amount of</p> <p>11 \$1.5 million approximately for NHTSA in deriving</p> <p>12 your damages, correct?</p> <p>13 A Yes.</p> <p>14 Q Okay. And if you add 8.4 million to</p> <p>15 1.5 million, it's approximately \$10 million,</p> <p>16 correct?</p> <p>17 A If you're asking me a math- --</p> <p>18 arithmetic question, that sounds about right.</p> <p>19 Q Okay. If you add the 8.478727 and the</p> <p>20 1.588607, it's approximately \$10 million.</p> <p>21 A What's 607? Wait.</p> <p>22 Q 15- --</p> |
| <p style="text-align: right;">Page 239</p> <p>1 Q Okay. Appendix E --</p> <p>2 A I mean, that -- go ahead.</p> <p>3 Q -- to Dr. Respass' initial report</p> <p>4 includes walk-throughs for various FAA purchase</p> <p>5 pathways. None of which are for CMS or NHTSA,</p> <p>6 correct?</p> <p>7 A That -- that is correct.</p> <p>8 Just to be clear, so as I testified</p> <p>9 before, I recall seeing some agency invoices</p> <p>10 and -- some Google invoices, some agency invoices,</p> <p>11 some FAA payment information. I didn't see</p> <p>12 anything that was inconsistent with the idea that</p> <p>13 the FAAs paid for their purchases. But I was not</p> <p>14 able to complete walk-throughs and that's why</p> <p>15 there are no walk-throughs for these transactions</p> <p>16 included in Appendix E.</p> <p>17 MS. GOODMAN: Okay. I'm going to move</p> <p>18 to strike everything after "That is correct."</p> <p>19 BY MS. GOODMAN:</p> <p>20 Q Let's turn to Append- -- Figure 16 of</p> <p>21 Dr. Respass' initial report.</p> <p>22 A Sorry, what page are you on?</p> | <p style="text-align: right;">Page 241</p> <p>1 A Where -- where -- maybe I'm just not</p> <p>2 looking at the right thing.</p> <p>3 Q All right. Withdrawn.</p> <p>4 A I'm looking at --</p> <p>5 Q Withdrawn.</p> <p>6 MR. BRISKIN: You went to a different</p> <p>7 number.</p> <p>8 THE WITNESS: Oh.</p> <p>9 BY MS. GOODMAN:</p> <p>10 Q The total CMS of 8,478,727 added to the</p> <p>11 total of NHTSA of 1,588,607 equals 10,067,334,</p> <p>12 correct?</p> <p>13 MR. BRISKIN: Objection to form.</p> <p>14 THE WITNESS: Again, if you're asking me</p> <p>15 an arithmetic question, I'm -- I'm -- I'm happy to</p> <p>16 take your representation about that.</p> <p>17 BY MS. GOODMAN:</p> <p>18 Q Okay. And 10 million --</p> <p>19 VIDEO TECHNICIAN: Careful not to touch</p> <p>20 the mic, ma'am.</p> <p>21 THE WITNESS: Oh, sorry, sorry.</p> <p>22 BY MS. GOODMAN:</p> |

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| <p style="text-align: right;">Page 242</p> <p>1 Q 10,067,334 divided by the total AdX 2 revenue in your damages calculation of 41,789,429 3 is 24.1 percent, correct? 4 MR. BRISKIN: Objection to form. 5 THE WITNESS: I will take your 6 representation on the arithmetic. 7 BY MS. GOODMAN: 8 Q Okay. And so for 24.1 percent of the 9 input of AdX revenues in your damages calculations 10 in this case you were not able to show -- you were 11 -- you did not write anywhere in your report that 12 CMS and NHTSA paid for those transactions, 13 correct? 14 MR. BRISKIN: Objection to form. 15 THE WITNESS: I did not perform 16 walk-throughs of the CMS and -- and NHTSA 17 pathways -- purchase -- FAA purchase pathways. 18 Can we take a break in about five -- 19 just a bio break in about five minutes? 20 BY MS. GOODMAN: 21 Q And so you did not -- you were not able 22 to confirm that NHTSA and CMS paid the combined</p> | <p style="text-align: right;">Page 244</p> <p>1 reflected in Figure 16, correct? 2 MR. BRISKIN: Objection to form. 3 THE WITNESS: Yes. 4 BY MS. GOODMAN: 5 Q Okay. And the \$10 million reflected in 6 Figure 16 is approximately 24.1 percent of the 7 total AdX revenue going into your damages 8 calculation, correct? 9 MR. BRISKIN: Objection to form. 10 THE WITNESS: I haven't done that math, 11 but I'm happy to take your representation on it. 12 MS. GOODMAN: Okay. We can take your 13 break now. 14 THE WITNESS: Great. Thank you. 15 VIDEO TECHNICIAN: Off the record at 16 5:29. 17 (Brief recess.) 18 VIDEO TECHNICIAN: Back on the record at 19 5:35. 20 BY MS. GOODMAN: 21 Q Okay. So continuing on your -- at 22 your -- looking at your Figure 16 on page 33, of</p> |
| <p style="text-align: right;">Page 243</p> <p>1 \$10 million shown in Figure 16, correct? 2 MR. BRISKIN: Objection to form. 3 THE WITNESS: The \$10 million would be a 4 subset of what they paid. Yeah, so, again, I was 5 unable to perform walk-throughs of the CMS and 6 NHTSA FAA purchase -- purchase pathways whereby 7 I -- I could gain an understanding of the payment 8 process. 9 BY MS. GOODMAN: 10 Q The purpose of the walk-through that you 11 do is as you describe in paragraph 56 of the 12 Dr. Respass initial report, which was to confirm 13 that the FAA paid for those transactions, correct? 14 A I would see those -- I see those words 15 on the page. The -- I think of it as I performed 16 the walk-throughs to -- to gain an understanding 17 of the payment flow process and in that process I 18 confirmed that the FAAs paid for amounts invoiced 19 by Google. 20 Q And because you didn't do that 21 walk-through for CMS or NHTSA, you had not 22 confirmed that those FAAs paid the \$10 million</p> | <p style="text-align: right;">Page 245</p> <p>1 the remaining approximately 31 million in AdX 2 revenue reflected in Figure 16, how much of that 3 31 million were you able to trace back to proof of 4 payment in the record? 5 MR. BRISKIN: Objection to form. 6 THE WITNESS: So Appendix E indicates 7 the -- 8 VIDEO TECHNICIAN: Ma'am, please don't 9 touch it. 10 THE WITNESS: Oh, sorry. 11 Appendix E shows the FAA purchase 12 pathways for which I performed walk-throughs. 13 BY MS. GOODMAN: 14 Q Okay. And how much in spending were you 15 able to walk through and thus confirm purchases -- 16 I'm sorry -- payments for? 17 MR. BRISKIN: Objection to form. 18 THE WITNESS: In the -- in the 19 walk-throughs I performed I confirmed that the 20 FAAs paid for 100 percent of Google's invoices. 21 BY MS. GOODMAN: 22 Q Well, you say in paragraph 56 that you</p> |

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| <p style="text-align: right;">Page 246</p> <p>1 selected a number of transactions of open web</p> <p>2 display advertising and confirmed that the FAA</p> <p>3 paid for those transactions.</p> <p>4 Is the number every single transaction</p> <p>5 which is included in your damages analysis?</p> <p>6 MR. BRISKIN: Objection to form.</p> <p>7 THE WITNESS: So there -- within each</p> <p>8 FAA purchase pathway there are -- there are many</p> <p>9 invoices and many purchases. I performed</p> <p>10 walk-throughs for a subset of the invoices -- of</p> <p>11 the Google invoices in each FAA purchase pathway.</p> <p>12 BY MS. GOODMAN:</p> <p>13 Q Okay. Let's turn to Appendix E,</p> <p>14 "Pathway Examples and Associated Documents" in</p> <p>15 Dr. Respass' initial report. It's page 141.</p> <p>16 A I am there.</p> <p>17 Q If I add up in each pathway example the</p> <p>18 numbers included in your Column A under "RFP76</p> <p>19 Data," is it your testimony that number will equal</p> <p>20 all of the transactions which you included in your</p> <p>21 damages analysis except for those for CMS and</p> <p>22 NHTSA?</p> | <p style="text-align: right;">Page 248</p> <p>1 Q Okay. And let's turn to Figure 11 in</p> <p>2 your -- in Respass' report.</p> <p>3 A Okay. We're -- we're leaving page 141.</p> <p>4 Can you tell me what page to go to?</p> <p>5 Q Twenty-one.</p> <p>6 And there's 46.4 million in Column A,</p> <p>7 which is included as in scope in your damages</p> <p>8 analysis, correct?</p> <p>9 MR. BRISKIN: Objection to form.</p> <p>10 THE WITNESS: Yes.</p> <p>11 BY MS. GOODMAN:</p> <p>12 Q Okay. So -- and you were not able to</p> <p>13 confirm for NHTSA or CMS the 1.4 or -- million or</p> <p>14 808,000 reflected in Figure 11, correct?</p> <p>15 MR. BRISKIN: Objection to form.</p> <p>16 THE WITNESS: You're referring to the</p> <p>17 amounts in Column A?</p> <p>18 BY MS. GOODMAN:</p> <p>19 Q Yes.</p> <p>20 A Yeah.</p> <p>21 Q You were not able to confirm that those</p> <p>22 amounts for CMS and NHTSA were in fact paid for?</p> |
| <p style="text-align: right;">Page 247</p> <p>1 MR. BRISKIN: Objection to form.</p> <p>2 THE WITNESS: No.</p> <p>3 BY MS. GOODMAN:</p> <p>4 Q No. If I --</p> <p>5 A That's not my testimony.</p> <p>6 Q Okay. If I add up each RFP76 data</p> <p>7 number reflected in Appendix E, that's</p> <p>8 approximately \$7.5 million. Any reason to doubt</p> <p>9 that?</p> <p>10 MR. BRISKIN: Objection to form.</p> <p>11 THE WITNESS: I'm happy to take your</p> <p>12 representation on that.</p> <p>13 BY MS. GOODMAN:</p> <p>14 Q Okay. And the RFP76 data shows total ad</p> <p>15 spending, right? It's not just AdX revenue?</p> <p>16 MR. BRISKIN: Objection to form.</p> <p>17 THE WITNESS: The RFP76 data shows the</p> <p>18 amounts invoiced by Google.</p> <p>19 BY MS. GOODMAN:</p> <p>20 Q Right, which is not only AdX revenue,</p> <p>21 correct?</p> <p>22 A Correct.</p> | <p style="text-align: right;">Page 249</p> <p>1 A Correct.</p> <p>2 Q Okay. And so if we take those amounts</p> <p>3 out from the 46.4 million, we're still at a number</p> <p>4 that's more than \$7.5 million, correct?</p> <p>5 MR. BRISKIN: Objection to form.</p> <p>6 THE WITNESS: If you're asking me about</p> <p>7 the arithmetic, I'll take your representation on</p> <p>8 that.</p> <p>9 BY MS. GOODMAN:</p> <p>10 Q Okay. And so of the \$46.4 million</p> <p>11 included in your damages analysis as reflected in</p> <p>12 Figure 11, you were able to confirm purchases for</p> <p>13 7.5 million as reflected in your Appendix E</p> <p>14 walk-through; is that accurate?</p> <p>15 MR. BRISKIN: Objection to form.</p> <p>16 THE WITNESS: I was able to confirm</p> <p>17 payment for more than the sum of the RFP76 amounts</p> <p>18 shown in Appendix E.</p> <p>19 BY MS. GOODMAN:</p> <p>20 Q Okay. But you nowhere set out the work</p> <p>21 you did to confirm that payment for all of those</p> <p>22 amounts, right? You only set out the work you did</p> |

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| <p style="text-align: right;">Page 250</p> <p>1 to confirm payment for \$7.5 million in RFP76</p> <p>2 spending numbers?</p> <p>3 MR. BRISKIN: Objection to form.</p> <p>4 THE WITNESS: I -- I disagree with that</p> <p>5 characterization. Appendix E shows examples of</p> <p>6 the walk-throughs that I performed for each of the</p> <p>7 FAA purchase pathways excluding the CMS and -- and</p> <p>8 NHTSA pathways. Appendix E includes all of the</p> <p>9 documents that I used in performing my</p> <p>10 walk-throughs. Although there's a -- a table at</p> <p>11 the beginning of each FAA purchase pathway in</p> <p>12 Appendix E, that table represents one example of</p> <p>13 the multiple walk-throughs that I performed and</p> <p>14 the -- the process is the same. The pattern is</p> <p>15 the same within each FAA purchase pathway for the</p> <p>16 process that I did of -- of walking through the --</p> <p>17 the payment process, so I -- I'll stop there.</p> <p>18 BY MS. GOODMAN:</p> <p>19 Q Okay. And so you did not give an</p> <p>20 example -- or you did not -- your pathway figures</p> <p>21 in Appendix E do not show me all of the work that</p> <p>22 you claim to have done, correct, in order to trace</p> | <p style="text-align: right;">Page 252</p> <p>1 the Navy purchases upon which your damages</p> <p>2 calculations are based?</p> <p>3 MR. BRISKIN: Objection to form.</p> <p>4 THE WITNESS: So I provided the example</p> <p>5 in Figures 54 -- in Figure 54 of the walk-through</p> <p>6 that I performed for that particular invoice and</p> <p>7 it's the exact same process that I did and that</p> <p>8 one could do for the other Google invoices that</p> <p>9 would be included in the Bates stamped documents</p> <p>10 in Figure 55. So I didn't feel it was necessary</p> <p>11 to have a very repetitive -- and it would be</p> <p>12 probably over a thousand pages -- I didn't feel it</p> <p>13 was necessary to repeat -- to show every single</p> <p>14 Google invoice -- show a table -- show a table</p> <p>15 like I did in 50- -- Figure 50- -- sorry,</p> <p>16 Figure 54 for every single walk-through that I did</p> <p>17 for Navy because the -- the pattern, the process</p> <p>18 is the same.</p> <p>19 One -- one could check my work, so to</p> <p>20 speak, by reviewing the documents that are listed</p> <p>21 in Figure 55.</p> <p>22 BY MS. GOODMAN:</p> |
| <p style="text-align: right;">Page 251</p> <p>1 the payments?</p> <p>2 MR. BRISKIN: Objection to form.</p> <p>3 THE WITNESS: I disagree with that.</p> <p>4 BY MS. GOODMAN:</p> <p>5 Q Okay. Let me try again.</p> <p>6 How am I supposed -- let's take -- let's</p> <p>7 take Navy. Turn to page 152.</p> <p>8 A I am there.</p> <p>9 Q Okay. And so your asterisks on the</p> <p>10 pathway documents, Figure 55, mean that those are</p> <p>11 the documents I should look at in order to check</p> <p>12 your work reflected in Figure 54, correct?</p> <p>13 MR. BRISKIN: Objection to form.</p> <p>14 THE WITNESS: Oh, one -- one could check</p> <p>15 my work, so to speak, by reviewing the asterisked</p> <p>16 documents.</p> <p>17 BY MS. GOODMAN:</p> <p>18 Q Okay. So how is it that I am able --</p> <p>19 how is it that you would suggest I look at every</p> <p>20 other document you cite in Figure 55 in order for</p> <p>21 me to check your work and confirm your testimony</p> <p>22 that you saw a hundred percent payment for all of</p> | <p style="text-align: right;">Page 253</p> <p>1 Q But you've told me that the tracing</p> <p>2 process that you've done is complex, right?</p> <p>3 A It -- it can be.</p> <p>4 Q Yes. And there are many, many, many</p> <p>5 documents cited in Figure 55, right?</p> <p>6 A I don't know what you mean by "many,</p> <p>7 many." I could count those for you if you'd like.</p> <p>8 Q All right. I'm not asking you do that.</p> <p>9 A Just -- so to -- to clarify --</p> <p>10 Q There's no pending question. Let me ask</p> <p>11 my question. Thank you.</p> <p>12 A Apologies.</p> <p>13 Q You have not set out in your report</p> <p>14 anywhere the pathway work you did to confirm</p> <p>15 payment for every invoice other than NHTSA and CMS</p> <p>16 that is included in your damages calculation,</p> <p>17 correct?</p> <p>18 MR. BRISKIN: Objection to form.</p> <p>19 THE WITNESS: I disagree with that.</p> <p>20 BY MS. GOODMAN:</p> <p>21 Q Your pathway figures that I can read in</p> <p>22 order to check your work and turn to the</p> |

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| <p style="text-align: right;">Page 274</p> <p>1 MR. BRISKIN: Objection to form.</p> <p>2 THE WITNESS: Are you talking about</p> <p>3 exchanges in general or are you talking about AdX?</p> <p>4 BY MS. GOODMAN:</p> <p>5 Q Did you see any evidence one way or</p> <p>6 another for any platform, any advertiser, ad</p> <p>7 network, or DSP that they may vary their platform</p> <p>8 fees based on bids into exchanges?</p> <p>9 MR. BRISKIN: Objection to form.</p> <p>10 THE WITNESS: I'm not really sure what</p> <p>11 you mean by "based on bids into exchanges." They</p> <p>12 may --</p> <p>13 BY MS. GOODMAN:</p> <p>14 Q Okay. Let me try again.</p> <p>15 Do you cite anything in paragraph 77, in</p> <p>16 terms of documentary evidence, that supports your</p> <p>17 assumption that the actual percentage of platform</p> <p>18 fees as a fraction of AdX revenue would have</p> <p>19 remained constant absent the AdX overcharge?</p> <p>20 MR. BRISKIN: Objection to form.</p> <p>21 THE WITNESS: I -- I think I just</p> <p>22 explained to you that I have no data available to</p> | <p style="text-align: right;">Page 276</p> <p>1 you, for example, any documents showing that</p> <p>2 Criteo sometimes charges a negative platform fee?</p> <p>3 MR. BRISKIN: Objection to form.</p> <p>4 THE WITNESS: Well, I was interested in</p> <p>5 the platform fees that Google charges.</p> <p>6 BY MS. GOODMAN:</p> <p>7 Q Okay. So you didn't see the document</p> <p>8 that I just explained?</p> <p>9 MR. BRISKIN: Objection to form.</p> <p>10 THE WITNESS: I'm not sure which</p> <p>11 document that is. Did you want to show that to me</p> <p>12 so I can refresh my memory?</p> <p>13 BY MS. GOODMAN:</p> <p>14 Q No. But do you recall sitting here</p> <p>15 today seeing any document showing that Criteo</p> <p>16 charges a negative platform fee on occasion?</p> <p>17 MR. BRISKIN: Objection to form.</p> <p>18 THE WITNESS: I reviewed hundreds of</p> <p>19 documents in this case. I -- I don't recall that</p> <p>20 one way or another.</p> <p>21 BY MS. GOODMAN:</p> <p>22 Q Okay. You conducted a profitability</p> |
| <p style="text-align: right;">Page 275</p> <p>1 me which indicates that the actual percentage</p> <p>2 would have changed, so I make the assumption that</p> <p>3 it would have remained the same. And so with</p> <p>4 regard to that, you can't cite something that's</p> <p>5 not there.</p> <p>6 BY MS. GOODMAN:</p> <p>7 Q Did you ask for information that would</p> <p>8 support or refute your assumption that the actual</p> <p>9 percentage of platform fees as a fraction of AdX</p> <p>10 revenues would have remained constant absent the</p> <p>11 AdX overcharge?</p> <p>12 MR. BRISKIN: Objection to form.</p> <p>13 THE WITNESS: I -- I directed my staff</p> <p>14 to research this issue and to look for data and,</p> <p>15 as -- as I testified, no data was available.</p> <p>16 BY MS. GOODMAN:</p> <p>17 Q When you say "data," are you talking</p> <p>18 about like a spreadsheet transaction or, you know,</p> <p>19 aggregated data or are you talking about documents</p> <p>20 like e-mails and memos and things?</p> <p>21 A Both.</p> <p>22 Q Okay. And so your staff didn't give</p> | <p style="text-align: right;">Page 277</p> <p>1 analysis in this case, right?</p> <p>2 A I did.</p> <p>3 Q And you understood that Professor Lee</p> <p>4 may rely on your profitability analysis, correct?</p> <p>5 A Yes.</p> <p>6 Q And you understand Professor Lee did not</p> <p>7 in fact rely on your profitability analysis,</p> <p>8 correct?</p> <p>9 MR. BRISKIN: Objection to the form.</p> <p>10 THE WITNESS: That is my understanding.</p> <p>11 BY MS. GOODMAN:</p> <p>12 Q And in your rebuttal report you say that</p> <p>13 you would not use a DVAA P&L excluding AdMob to</p> <p>14 reach any conclusion about the profitability --</p> <p>15 profitability of products in the relevant product</p> <p>16 markets, correct?</p> <p>17 MR. BRISKIN: Objection to form.</p> <p>18 THE WITNESS: Those -- those sounds like</p> <p>19 the words I -- I used.</p> <p>20 BY MS. GOODMAN:</p> <p>21 Q I'm looking at paragraph 56.</p> <p>22 A In which report?</p> |

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| <p style="text-align: right;">Page 278</p> <p>1 Q The rebuttal.</p> <p>2 A Yes.</p> <p>3 Q And the DVAA P&L excluding AdMob to</p> <p>4 which you are referring in paragraph 56 is a</p> <p>5 figure that you created in -- or that Dr. Respass</p> <p>6 created in his initial report, correct?</p> <p>7 A There is a figure that relates to the</p> <p>8 profitability of DVAA excluding AdMob in the</p> <p>9 Respass report.</p> <p>10 Q Okay. And that's Figure 28 on page 49</p> <p>11 of the Respass report, correct? If you can look</p> <p>12 at that.</p> <p>13 A Okay. Hold on a second.</p> <p>14 Which page?</p> <p>15 Q Forty-nine, Figure 28.</p> <p>16 A I see that.</p> <p>17 Q And is that the DVAA P&L to which you</p> <p>18 are referring in paragraph 56 of your rebuttal</p> <p>19 report?</p> <p>20 A Yes, I believe so.</p> <p>21 Q Okay. And then looking at Figure 28 in</p> <p>22 the initial Respass report, that figure shows that</p> | <p style="text-align: right;">Page 280</p> <p>1 the errata version if you'd like.</p> <p>2 Q Yes.</p> <p>3 A So, sorry, ask your question again.</p> <p>4 Q This Figure 28 shows that DVAA excluding</p> <p>5 AdMob took operating profit losses from 2015 to</p> <p>6 2017, right?</p> <p>7 A Yes.</p> <p>8 Q Okay. And you agree that this Figure 28</p> <p>9 shows that AdMob is more profitable than DVAA on</p> <p>10 average?</p> <p>11 MR. BRISKIN: Objection to form.</p> <p>12 THE WITNESS: One more time.</p> <p>13 BY MS. GOODMAN:</p> <p>14 Q You agree that this Figure 28 shows that</p> <p>15 AdMob is more profitable than DVAA on average?</p> <p>16 MR. BRISKIN: Objection to form.</p> <p>17 THE WITNESS: The results of this table</p> <p>18 compared to the DVAA P&L including AdMob suggests</p> <p>19 that AdMob is more profitable than DVAA on</p> <p>20 average.</p> <p>21 BY MS. GOODMAN:</p> <p>22 Q So you stand by the sentence in</p> |
| <p style="text-align: right;">Page 279</p> <p>1 DVAA excluding AdMob took operating profit losses</p> <p>2 from 2015 to 2017, correct?</p> <p>3 MR. BRISKIN: Objection to form.</p> <p>4 THE WITNESS: It -- it shows negative</p> <p>5 amounts for operating profit for those years.</p> <p>6 There is an errata version of this</p> <p>7 figure in my rebuttal report.</p> <p>8 BY MS. GOODMAN:</p> <p>9 Q That's what we're looking at.</p> <p>10 A Oh, I was looking at --</p> <p>11 Q No. You're --</p> <p>12 A Sorry, am I looking at the errata</p> <p>13 version?</p> <p>14 Q Yes, ma'am.</p> <p>15 A Got it.</p> <p>16 Q Okay. So your Figure 28, which is Lim</p> <p>17 Exhibit 1, shows operating profit losses from 2015</p> <p>18 to 2017, right?</p> <p>19 A Sorry, there's -- I was getting confused</p> <p>20 between the errata version and the updated</p> <p>21 version. There's an updated version as well in --</p> <p>22 in my rebuttal report. But we -- we can keep on</p> | <p style="text-align: right;">Page 281</p> <p>1 paragraph 99 that "Operating profit margin in this</p> <p>2 modified DVAA P&L excluding AdMob drops relative</p> <p>3 to the pure DVAA P&L in almost all years,</p> <p>4 suggesting that AdMob is more profitable than DVAA</p> <p>5 on average," correct?</p> <p>6 A Yes.</p> <p>7 Q Okay. So let's go back to your</p> <p>8 paragraph 56 in your rebuttal report.</p> <p>9 The DVAA P&L excluding AdMob that you</p> <p>10 would not use to reach any conclusion about the</p> <p>11 profitability of products in the relevant product</p> <p>12 markets, does that also include Figure 2 in your</p> <p>13 rebuttal report?</p> <p>14 MR. BRISKIN: Objection to form.</p> <p>15 THE WITNESS: That's the updated one I</p> <p>16 was talking about. Yes, that -- wherever that was</p> <p>17 the sentence you read me. Sorry.</p> <p>18 BY MS. GOODMAN:</p> <p>19 Q Paragraph 56.</p> <p>20 A I would -- I would also not use the DVAA</p> <p>21 P&L excluding AdMob figures in Figure 2 of the</p> <p>22 rebuttal report to reach any conclusion about the</p> |

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| <p style="text-align: right;">Page 282</p> <p>1 profitability of products in the relevant product</p> <p>2 markets.</p> <p>3 Q Okay. And both Figure 2 in your</p> <p>4 rebuttal report and Figure 28 in the corrected for</p> <p>5 errata Respass report show DVAA excluding AdMob on</p> <p>6 a booked-revenue basis, correct?</p> <p>7 A They do.</p> <p>8 Q And thus you would not rely on any P&L</p> <p>9 on a booked-revenue showing -- created on a</p> <p>10 booked-revenue basis to make any conclusions about</p> <p>11 the profitability of products in the relevant</p> <p>12 product markets, correct?</p> <p>13 A Correct.</p> <p>14 Q Okay. And Figures 2 and Figures 28 both</p> <p>15 reflect out-of-scope activity, correct?</p> <p>16 A They --</p> <p>17 MR. BRISKIN: Objection to form.</p> <p>18 THE WITNESS: They both reflect -- they</p> <p>19 both include activity that is not in the relevant</p> <p>20 product markets.</p> <p>21 BY MS. GOODMAN:</p> <p>22 Q Okay. And are you aware of any expert</p> | <p style="text-align: right;">Page 284</p> <p>1 THE WITNESS: One could not arrive at</p> <p>2 a -- a -- one could not simultaneously apply both</p> <p>3 a principal and agent treatment to the same</p> <p>4 transaction. Sorry, I'm not --</p> <p>5 BY MS. GOODMAN:</p> <p>6 Q Sure. Understood. Let me ask again.</p> <p>7 And it's not possible for -- do you</p> <p>8 agree it's not possible to conclude that, on the</p> <p>9 set of facts and circumstances for any given</p> <p>10 transaction, that a registrant could treat itself</p> <p>11 as a principal or an agent?</p> <p>12 MR. BRISKIN: Objection to form.</p> <p>13 THE WITNESS: Sorry, can you ask your</p> <p>14 question again?</p> <p>15 BY MS. GOODMAN:</p> <p>16 Q Do you agree that when applying topic</p> <p>17 606 to any set of facts and circumstances, it is</p> <p>18 not permitted under that guidance to reach a</p> <p>19 conclusion that the registrant can be either a</p> <p>20 principal or an agent?</p> <p>21 MR. BRISKIN: Objection to the form.</p> <p>22 THE WITNESS: I think the guidance with</p> |
| <p style="text-align: right;">Page 283</p> <p>1 for the plaintiffs who rely on your profitability</p> <p>2 analyses in their reports?</p> <p>3 A I am not.</p> <p>4 Q And Figure 2 and Figure 28 also show in</p> <p>5 the MECE view that in 2021 and 2022 -- withdrawn.</p> <p>6 Figures 28 and 2 also show that DVAA</p> <p>7 profitability excluding AdMob decreased from 2021</p> <p>8 to 2022, correct?</p> <p>9 A Yes.</p> <p>10 Q Do you agree that the principal versus</p> <p>11 agent consideration is not -- withdrawn.</p> <p>12 Do you agree that the principal versus</p> <p>13 agent standard in ASC 606 does not permit</p> <p>14 optionality?</p> <p>15 MR. BRISKIN: Objection to form.</p> <p>16 THE WITNESS: I'm not sure what you mean</p> <p>17 by "optionality." Can you explain that -- can you</p> <p>18 explain further what you mean?</p> <p>19 BY MS. GOODMAN:</p> <p>20 Q That it's not -- that it's not a -- it</p> <p>21 doesn't allow for both conclusions to be drawn.</p> <p>22 MR. BRISKIN: Objection to form.</p> | <p style="text-align: right;">Page 285</p> <p>1 regard to principal/agent treatment requires a</p> <p>2 high level of judgment and reasonable accountants</p> <p>3 could arrive at different conclusions with regard</p> <p>4 to whether -- given the same set of facts and</p> <p>5 circumstances -- as to whether a company should be</p> <p>6 considered a principal or whether a company should</p> <p>7 be considered an agent.</p> <p>8 BY MS. GOODMAN:</p> <p>9 Q And you agree that the principal versus</p> <p>10 agent assessment is often fact specific and</p> <p>11 judgment based?</p> <p>12 A It is fact specific and requires</p> <p>13 judgment.</p> <p>14 Q And because it is fact specific and it</p> <p>15 requires judgment, do you agree that companies</p> <p>16 should be cautious about relying on benchmarking</p> <p>17 to their peer's accounting?</p> <p>18 MR. BRISKIN: Objection to form.</p> <p>19 THE WITNESS: I think the SEC says --</p> <p>20 says something along -- or SEC staff has said</p> <p>21 something along the lines that one can't -- one</p> <p>22 can't look at another company's accounting with</p> |

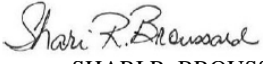
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| <p style="text-align: right;">Page 286</p> <p>1 regard to the principal/agent determination and</p> <p>2 without doing its own determination simply just</p> <p>3 copy what the other company has done.</p> <p>4 BY MS. GOODMAN:</p> <p>5 Q Okay. And do you agree that significant</p> <p>6 judgment does not mean that the -- the standard</p> <p>7 permits optionality?</p> <p>8 MR. BRISKIN: Objection to form.</p> <p>9 THE WITNESS: There's that "optionality"</p> <p>10 word again. Maybe you could rephrase that</p> <p>11 question because that's confusing me.</p> <p>12 BY MS. GOODMAN:</p> <p>13 Q Okay. So are you unable to answer the</p> <p>14 question as I phrased it to you?</p> <p>15 A I'm sorry, I cannot. It's not clear to</p> <p>16 me.</p> <p>17 Q Okay. And do you agree that an area of</p> <p>18 significant judgment does not mean that the</p> <p>19 standard permits optionality?</p> <p>20 MR. BRISKIN: Objection to form.</p> <p>21 THE WITNESS: It's the "optionality"</p> <p>22 word that -- that I'm getting hung up on. Maybe</p> | <p style="text-align: right;">Page 288</p> <p>1 Q Okay. Let's look at page 52 of the</p> <p>2 Respress initial report corrected for errata.</p> <p>3 A Okay. Okay. I'm there.</p> <p>4 Q The last sentence of paragraph 104 says,</p> <p>5 "However, I believe it would also be reasonable to</p> <p>6 consider the specified good or service that Google</p> <p>7 provides advertisers to simply be publishers' ad</p> <p>8 inventory."</p> <p>9 Did I read that right?</p> <p>10 A You read that right.</p> <p>11 Q And is that your opinion?</p> <p>12 A I think the -- the words "Google</p> <p>13 provides advertisers" is a little ambiguous in</p> <p>14 that sentence. I believe it would be reasonable</p> <p>15 to consider the specified good or service that</p> <p>16 advertisers receive to be simply publisher ad</p> <p>17 inventory.</p> <p>18 Q Okay. Is that what you are meant to --</p> <p>19 is that what registrants are required to evaluate</p> <p>20 under ASC 606, whether the good or service that is</p> <p>21 received, or are they supposed to evaluate the</p> <p>22 good or services provided?</p> |
| <p style="text-align: right;">Page 287</p> <p>1 you can rephrase the question without using that</p> <p>2 word.</p> <p>3 BY MS. GOODMAN:</p> <p>4 Q Okay. And do you agree that in order to</p> <p>5 make the judgments needed in applying ASC 606,</p> <p>6 registrants need to roll up their sleeves to</p> <p>7 understand the nuances of the transactions they're</p> <p>8 evaluating and apply the standard to their</p> <p>9 specific set of facts and circumstances?</p> <p>10 MR. BRISKIN: Objection to form.</p> <p>11 THE WITNESS: I would agree with that.</p> <p>12 BY MS. GOODMAN:</p> <p>13 Q You -- it's your opinion it would also</p> <p>14 be reasonable to consider the specified good or</p> <p>15 service that Google provides advertisers to simply</p> <p>16 be publishers' ad inventory, correct?</p> <p>17 MR. BRISKIN: Objection to form.</p> <p>18 THE WITNESS: It's my opinion that it</p> <p>19 would be reasonable to consider the good or</p> <p>20 service that an advertiser receives to be</p> <p>21 publisher inventory.</p> <p>22 BY MS. GOODMAN:</p> | <p style="text-align: right;">Page 289</p> <p>1 MR. BRISKIN: Objection to form.</p> <p>2 THE WITNESS: I don't -- I don't want to</p> <p>3 get hung up on a semantics thing, but -- but the</p> <p>4 first step is to identify the specific goods or</p> <p>5 services to be provided to the customer. I</p> <p>6 didn't -- I didn't mean anything by "received"</p> <p>7 versus "provided."</p> <p>8 BY MS. GOODMAN:</p> <p>9 Q Okay.</p> <p>10 A It's just that, you know, one party</p> <p>11 provides, another party receives.</p> <p>12 Q And ASC 606 talks about the provision of</p> <p>13 goods and services, right?</p> <p>14 MR. BRISKIN: Objection to form.</p> <p>15 THE WITNESS: It does.</p> <p>16 BY MS. GOODMAN:</p> <p>17 Q And this sentence in paragraph 104 which</p> <p>18 we just read, you don't cite any documents in</p> <p>19 support of your belief that it would also be</p> <p>20 reasonable to consider the specified good or</p> <p>21 service that Google provides advertisers to simply</p> <p>22 be publishers' ad inventory, correct?</p> |

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| <p style="text-align: right;">Page 318</p> <p>1 Q When you worked at Ernst & Young -- what</p> <p>2 time period did you work at Ernst & Young?</p> <p>3 A '95 through '98.</p> <p>4 Q Other than in this case, have you looked</p> <p>5 at Ernst & Young audit reports since -- over the</p> <p>6 time -- over the time period of 2015 to the</p> <p>7 present let's say? In the course of your work</p> <p>8 have you had occasion to look at EY audit reports?</p> <p>9 A For any company?</p> <p>10 Q Yes.</p> <p>11 A Audit opinions, yes.</p> <p>12 Q Okay. And in the course of your work on</p> <p>13 this case you do not disagree with anything that</p> <p>14 EY concluded as to the principal/agent</p> <p>15 determination that Google made, correct?</p> <p>16 MR. BRISKIN: Objection to form.</p> <p>17 THE WITNESS: I -- I don't agree or</p> <p>18 disagree with EY not taking exception to Google's</p> <p>19 treatment of itself as a principal in most of its</p> <p>20 transactions.</p> <p>21 BY MS. GOODMAN:</p> <p>22 Q Okay.</p> | <p style="text-align: right;">Page 320</p> <p>1 MS. GOODMAN: We just went back on the</p> <p>2 record and I just want to note for the record that</p> <p>3 I am reserving my rights to bring Ms. Lim back for</p> <p>4 additional questioning based on the filibustering,</p> <p>5 evasive answers, and nonresponsiveness to my</p> <p>6 questions. So I just wanted to state that for the</p> <p>7 record.</p> <p>8 MR. BRISKIN: Well, we dispute that. We</p> <p>9 don't agree with your characterizations.</p> <p>10 MS. GOODMAN: Okay. Thank you.</p> <p>11 (Whereupon, at 7:28 p.m., the</p> <p>12 deposition of ADORIA LIM</p> <p>13 was concluded.)</p> <p>14 * * * * *</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> |
| <p style="text-align: right;">Page 319</p> <p>1 MR. BRISKIN: Counsel, we're at five</p> <p>2 minutes over seven hours.</p> <p>3 MS. GOODMAN: I have one more question</p> <p>4 if I may.</p> <p>5 MR. BRISKIN: Okay.</p> <p>6 MS. GOODMAN: Thanks.</p> <p>7 BY MS. GOODMAN:</p> <p>8 Q You do not recall reviewing or seeing</p> <p>9 testimony from representatives of the Navy in</p> <p>10 which they testified the only ad network or DSP</p> <p>11 that they ever used to buy open web display ads</p> <p>12 was The Trade Desk, correct?</p> <p>13 MR. BRISKIN: Objection to form.</p> <p>14 THE WITNESS: I -- I reviewed thousands</p> <p>15 of documents in this case. I -- I don't recall</p> <p>16 that one way or the other.</p> <p>17 MS. GOODMAN: Okay. I pass the witness.</p> <p>18 MR. BRISKIN: We have no questions.</p> <p>19 VIDEO TECHNICIAN: All right. If that's</p> <p>20 everything, off the record on February 29th, 2024</p> <p>21 at 7:28 p.m.</p> <p>22 (Discussion off the record.)</p> | <p style="text-align: right;">Page 321</p> <p>1 CERTIFICATE OF NOTARY PUBLIC</p> <p>2 I, SHARI R. BROUSSARD, the officer before</p> <p>3 whom the foregoing deposition was taken, do hereby</p> <p>4 certify that the witness whose testimony appears</p> <p>5 in the foregoing deposition was duly sworn by me;</p> <p>6 that the testimony of said witness was taken by me</p> <p>7 in stenotype and thereafter reduced to typewriting</p> <p>8 under my direction; that said deposition is a true</p> <p>9 record of the testimony given by said witness;</p> <p>10 that I am neither counsel for, related to, nor</p> <p>11 employed by any of the parties to the action in</p> <p>12 which this deposition was taken; and, further,</p> <p>13 that I am not a relative or employee of any</p> <p>14 counsel or attorney employed by the parties</p> <p>15 hereto, nor financially or otherwise interested in</p> <p>16 the outcome of this action.</p> <p>17</p> <p>18 </p> <p>19 SHARI R. BROUSSARD</p> <p>20 Notary Public in and for the</p> <p>21 District of Columbia</p> <p>22 My commission expires:</p> <p>August 14, 2025</p> |

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